JUS REGIUM:

Or, The Juſt and Solid

FOUNDATIONS OF Monarchy

In General; And more eſpecially

OF THE

MONARCHY of SCOTLAND:

Maintain'd againſt

Buchannan, Naphtali, Dolman, Milton,

&c.

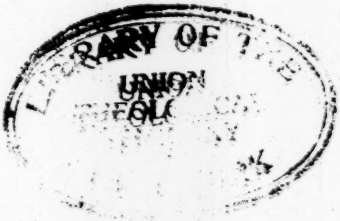
By Sir GEORGE MACKENZIE,
His Majeſties Advocate in *Scotland*.

1 Sam. x. 26, 27.

And there went with Saul *a band of men, whoſe hearts God had touched.*

But the children of Belial *ſaid, How ſhall this man ſave us? And they deſpis'd him, and brought him no Preſents, but he held his peace.*

London, Printed for *R. Chiſwel* at the *Roſe* and *Crown* in St. *Pauls* Church-yard. 1684.


UNION

TO THE

Univerſity

OF

OXFORD.

THE King my Maſter, and His Royal Brother, being by their Natural Goodneſs inclin'd to pardon all Crimes, except Flattery; and by their Modeſty to think all that Flattery, which can be juſtly ſaid of them. I could not in Prudence dedicate this Book to Them, ſince the Firſt Part of it, concerns *The Right of the Monarchy*: And the ſecond, *The Right of the Succeſſor*. And therefore (ſince to ſupport a Crown, is the next Honour to the

bearing it) this *Dedication* was due to you, who have both in the laſt Rebellion, and this Factious Age, maintain'd the Royal Intereſt ſo learnedly and generouſly. Your late Deciſions againſt the *Fanaticks*, have almoſt made my Reaſonings uſeleſs; for your Authority will weigh as much as any private Man's Arguments. And what ſhould have more Credit amongſt Men, than an illuſtrious Company of learn'd and pious Divines, deciding for their Duty and Conſcience, againſt their Intereſt and Vanity. Men who wiſh for no Crown, ſave in Heaven; and deſire no Power, ſave over their own Luſts and Paſſions. To the Epiſcopal Church God hath fulfilled that promiſe, *of making Kings their Nurſing Fathers*, the true Heirs and beſt Scholars of the Primitive Church, happier than it in this: that they

they do practiſe its Virtues, without its Neceſſities; and need not Poverty to make them Humble, nor Armies to make them Loyal. And who in it are ſo happy as you, who can be Submiſſive, without being Slaves; Firm, without being Opinionated; Zealous, without being Cruel; and Pious, without being Bigot. To whom I cannot wiſh greater Bleſſings, than that your Fame may grow as great as your Loyalty: That your Univerſity may continue proſperous, till another grow more Learn'd; and that all honeſt Men may be as ready to ſerve you, as,

Your Sincere Well-wiſher,

and Humble Servant,

Geo. Mackenzie.

TO THE

Reader.

BUchannan's *Book*, De Jure Regni, *being lately Tranſlated, and many Copies diſpers'd, His Majeſties Advocate, in Duty to the King, and Compaſſion to the People, who are thus like to be poyſon'd, has written this Anſwer; which was neceſſary, notwithſtanding of the learned Anſwers made by* Barclay *and* Blackwood, *ſince beſide that theirs are in Latin, and ſo not uſeful to the People, it is conceiv'd they underſtood not fully our Law, nor was our Law ſo clear then as now. Many Arguments have been invented ſince their time by* Dolman, Milton, Nephthali, *&c. and Experience has open'd our Eyes much ſince their time.* Blackwood's *Arguments are calculated for the* Romiſh *Church, and* Barclay *has miſtaken eſſential Points: Theirs run upon Hiſtory and Philology, this upon our Law, the Laws of Nations, Reaſon and Conveniency; and, I am afraid, it will be ſaid that there are too many new thoughts in mine.*

THE

THE Juſt Right OF MONARCHY

In general, but more eſpecially of the KINGS *of* SCOTLAND, *aſſerted againſt* Buchannan *and others.*

LUCIFER might in Reaſon have contented himſelf with that ſhare of Knowledge, Glory and Power, which was beſtowed upon him, by his Almighty, and Bountiful Soveraign. And *Adam* ſhould have reſted ſatisfied, with the Glory of having been made after the Image of God, and with being his Lieutenant in this lower World. But there are ſuch ſtrong Charms in Ambition, and Vanity, that the one reſolved to hazard

all that he poſſeſſed, as being ſecond, rather than not try if he could be the firſt, and the other, deſiring to improve his preſent ſhare, forfeited thoſe excellencies which he enjoyed. How jealous then ſhould frail and fallen man be, in debates with thoſe, whom the Almighty has appointed to be his Vicegerents amongſt them; and to whom he has ſaid, *Ye are Gods.* And how hard is it for us to conquer that Vice, which the one could not reſiſt, though he was all Light, and the other though he was all Innocence?

What Nations under Heaven were ſo happy as we, under the Reign of King *Charles* the Firſt? Secure againſt all Invaſion from abroad, by the ſituation of our Country; and from all Oppreſſion at home, by its Laws, and the gracious Conceſſions of our excellent Monarchs: But more eſpecially in that Age, by the innate Vertues of that King, who was ſevere to none but to himſelf; and whoſe Prerogatives, no Laws could bound ſo much as His own Goodneſs did. And yet weary with the burden of our own proſperity, we luſted after new improvements of Liberty and Property: And after we had emptied our own Veins, and Purſes, in fight-

fighting for theſe, all we gained, was to be Slaves, and Beggars. And having kill'd for Religion a King, who had more of it, than all who fought againſt him, we ſplit our own Church into a thouſand pieces, and from its murthered Body, did ariſe thoſe Sectarians, like ſo many Worms, and Inſects. But yet God Almighty deſiring to try us once more, and make us for ever inexcuſable, did not only deliver us from that Slavery that we had drawn upon our ſelves, but becauſe we were all Crimes, he gave us a King who was all Clemency, and who deſerves to have been Elected, if he had not been born our King: And yet after that he had alſo condeſcended to all our new Extravagancies, and that by His Conduct, all Sciences flouriſh, and Trade is ſo increaſed, that Riches are become a Plague. We are now troubled with Jealouſies, becauſe we can be troubled with nothing elſe: And murmuring againſt the gentleſt and beſt of Kings, we are tormented daily with Apparitions, Viſions, Plots, Pamphlets and Libels. But under whom can we expect to be free from Arbitrary Government, when we were, and are afraid of it under King *Charles* the Firſt, and King *Charles* the Second? And

what King, or Government, can be ſecure from thoſe, who Conſpire the death of this moſt merciful Prince, and of this ſo ancient, and ſo well moulded Government?

Amongſt the other wicked Inſtruments in theſe Rebellions, I muſt confeſs that our Country-men *Buchannan* (one of the chief Ornaments, and Reproaches of his native Country) the Authors of *Lex Rex*, *Naphtali*, and *Jus Populi Vindicatum*, have been Ring-leaders, who have endeavoured extreamly to poyſon this Nation by perſwading the People:

1. That our Monarchs derive their Rights from them.

2. That therefore ſince they derive their Right from the People, they are accountable to them for their adminiſtration, and conſequently they may be ſuſpended or depoſed by them.

3. That the People may Reform without them, and may riſe in Arms againſt them, if the Monarch hinder them to Reform.

4. That the People or their Repreſentatives may Exclude the Lineal Succeſſor, and raiſe to the Throne any of the Royal Family who doth beſt deſerve the Royal Dignity.

Theſe

Theſe being all matters of Right, the plain and eaſie way which I reſolve to take for refuting them, ſo as the learned and unlearned may be equally convinced, ſhall be firſt, by giving a true account of what is our preſent poſitive Law. 2. By demonſtrating that as our preſent poſitive Law is inconſiſtent with thoſe Principles, ſo theſe our poſitive Laws are excellently well founded upon the very nature of Monarchy, and that thoſe Principles are inconſiſtent with all Monarchy: And the third Claſs of my Arguments ſhall be from the Principles of common Reaſon, Equity and Government, abſtracting both from the poſitiveneſs of our Law, and the nature of our Monarchy: And in the laſt place I ſhall anſwer the Arguments of thoſe Authors.

As to the firſt, I conceive that a Treatiſe, *De Jure Regni apud Scotos*, ſhould have clear'd to us what was the power of Monarchs by Law, and particularly, what was the poſitive Law of *Scotland* as to this point; for if theſe points be clear by our poſitive Law, there is no further place for debate, ſince it is abſolutely neceſſary for Mankind, eſpecially in matters of Government, that they at laſt acquieſce in ſomething that is

fix'd and certain, and therefore it is very well obſerv'd by Lawyers and States-men, that before Laws be made, men ought to reaſon; but after they are made, they ought to obey: which makes me admire how *Buchannan* and the other Authors that I have named, ſhould have adventur'd upon a debate in Law, not being themſelves Lawyers; and ſhould have written Books upon that Subject, without citing one Law, Civil, or Municipal, *pro* or *con*: Nor is their Veracity more to be eſteemed than their Learning; for it's undeniable that *Buchannan* wrote this Book, *De Jure Regni*, to perſwade *Scotland* to raiſe his Patron, though a Baſtard to the Crown: and the Authors of *Lex Rex*, *Jus Populi Vindicatum*, and others, were known to have written thoſe Libels from picque againſt the Government, becauſe they juſtly ſuffered under it.

I know that to this it may be anſwered, That theſe Statutes are but late, and were not extant in *Buchannan's* time, and conſequently *Buchannan* cannot be refuted by them.

2. That theſe Statutes have been obtain'd from Parliaments, by the too great influence of their Monarchs, and the too great Puſillanimity

Puſillanimity of Parliaments, who could not reſign the Rights and Priviledges of the People, ſince they have no Warrant from them for that effect.

To the firſt of which, I anſwer, that my Task is not to form an Accuſation againſt *Buchannan*, but againſt his Principles, and to demonſtrate, that theſe Principles are not our Law, but are inconſiſtent with it, and it is ridiculous to think, that any ſuch Laws ſhould have been made, before thoſe Treaſonable Principles were once hatched and maintained, for Errors muſt appear before they be condemned: and by the ſame Argument it may be as well urged, that *Arius*, *Neſtorius*, &c. were not Hereticks, becauſe thoſe Acts of General Councils, which condemned their Hereſies, were not extant, when they firſt defended thoſe opinions; and that our King had not the power of making Peace and War, till the Year 1661.

But, 2*dly*, For clearing this Point, it is fit to know that our Parliaments never give Prerogatives to our Kings, but only declare what have been their Prerogatives, and particularly in theſe Statutes that I ſhall Cite, the Parliament doth not Confer any New Right upon the King, but only ac-

knowledge what was Originally his Right and Prerogative from the beginning, and therefore the Parliament being the only Judges who could decide whether *Buchannans* Principles were ſolid, and what was *Jus Regni apud Scotos.* Theſe Statutes having decided thoſe points controverted by him, there can be hereafter no place for Debate, and particularly as to *Buchannan*, his Book *De jure Regni apud Scotos,* it is expreſly condemn'd as Slanderous, and containing ſeveral offenſive Matters by the 134 *Act, Parl.* 8. *Ja.* 6. in *Anno* 1584. which was the firſt Parliament that ever ſate after his Book was printed.

To the 2*d*, I anſwer, that it being controverted what is the Kings Power, there can be no ſtronger Deciſion of that Controverſie in Favours of the King, than the acknowledgment of all Parties Intereſted, and it is ſtrange and unſufferable to hear ſuch as appeal to Parliaments, cry out againſt their Power, their Juſtice, and Deciſions; and why ſhould we oppreſs our Kings, and raiſe Civil Wars, whereby we endanger ſo much our ſelves to procure powers to Parliaments, if Parliaments be ſuch ridiculous things as we cannot truſt when they are impowred by us? and if

there

there be any force in this anſwer of *Buchannans*, there can be none in any of our Laws, for that ſtrikes at the Root of all our Laws, and as I have produced a Tract of reiterated Laws for many Years, ſo where were there ever ſuch free unlimited Parliaments in any Nation as theſe, whoſe Laws I have Cited? 2*dly*, Whatever might be ſaid, if a poſitive Contract betwixt the King and People were produced, clearing what were the juſt Limits of the Monarchy, and bounding it by clear Articles mutually agreed upon, yet it is very abſurd and extravagant to think, that when the Debate is, what is the King of *Scotlands* juſt Power and Right, and from whom he Derives it, that the Laws and repeated Acknowledgements of the whole Repreſentatives of the People aſſembled in the Supream Court of the Nation, having no open force upon it, but enacted at ſeveral times, in many ſeveral Parliaments, under the gentleſt, peaceableſt, and wiſeſt Kings that ever they had, ſhould not be better believed than the Teſtimonies of three or four byaſs'd and diſoblig'd Pedants, who underſtood neither our Laws nor Statutes, and who can bring no clear fundamental Law, nor produce no Contract nor Paction reſtricting

the

the King, or bounding his Government. *3dly*, That which adds a great deal of Authority to this Debate, and theſe Statutes is, that as this is clear by our poſitive Law, ſo it is neceſſarily inferred from the nature of our Monarchy, and is very advantagious for the Subjects of this Kingdom, which I ſhall clear in the ſecond and third Arguments that I ſhall bring againſt thoſe Treaſonable Principles, nor can they be ſeconded, by any ſolid Reaſon, as I ſhall make appear in anſwering the Arguments of thoſe Authors.

I know that *Nephthaly*, the Author of *Jus Populi*, and our late Fanatical Pamphlets, alleadge that our Parliaments ſince 1661. are null and unlawful, becauſe many who have right to Sit as Members, or to Elect Members, were excluded by the Declaration or Teſt: but my anſwer is, *Firſt*, That theſe were excluded by Acts of Parliament, which were paſt in Parliaments prior to their excluſion, and ſo they were excluded by Law, and no man can be ſaid to be illegally excluded from his Seat in Parliament, who is excluded by a clear Statute. *2dly*, If this were not a good anſwer, then the Papiſts might pretend that they are unjuſtly excluded, becauſe they will

will not take the Oath of Supremacy, and because they are Papists; and how can the Fanaticks pretend to make this objection, since they by the same way excluded the Kings Loyal Subjects in the Year 1647. and 1649. *&c.* Or how would these Authors have rail'd at any Malignant for using this Argument against them, which they use now most impudently against us with far less justice, for their Parliaments were unjust upon other Heads, as being inconsistent with the fundamental Laws of the Kingdom, and so their Acts of exclusion were null in themselves. *3dly.* All the Statutes made since 1661, are necessary consequences of former Laws, and so are rather renewed than new Laws. *4ly.* If their reasons were allow'd there could be no end of controversie, for all who are excluded would still alleadge that they were unjustly excluded, and consequently there could be no submission to Authority, and so no Society nor Peace.

The last answer that our Dissenters make when they are driven from all their other grounds, is, that they, though the lesser, are yet the sounder part of the Nation; but this shift does not only overturn Monarchy, but establishes Anarchy, and

though

though they were once ſettled in their beloved Common-wealth, this would be ſufficient to overturn it alſo, for every little number of Diſſenters, nay, and even the meaneſt Diſſenter himſelf; might pretend to be this ſounder part of the Common-wealth, but God Almighty foreſeeing that pride or ignorance would ſuggeſt to frail Mankind this principle, ſo inconſiſtent with all that Order and Government, whereby he was to preſerve the World, did therefore in his great Wiſdom convince men by the light of their own Reaſon, that in matters of common concern, which were to be determined by Debate, the greater number ſhould determine the leſſer; and ſuch as drive beyond this Principle, ſhall never find any certain Point at which they may reſt: and by the ſame Reaſon, the Law has pronounc'd it ſafer to reſt in what is decided, though it be unjuſt, than to caſt looſe the Authority of Deciſions, upon which the Peace and quiet of the Common-wealth does depend, who would be ſo humble and juſt, as to confeſs that his Adverſary has the juſter ſide? Or who would obey if this were allow'd? And what Idea of Government or Society could

a man form to himſelf, allowing once this principle.

It is alſo very obſervable, that thoſe who pretend to be the ſounder part, and deny obedience upon that account, are ſtill the moſt inſolent and irregular of all the Society, the greateſt admirers of themſelves, and the greateſt enemies to peace, and ſo the unfitteſt to be Judges of what is the ſounder part, though they were not themſelves Parties. But what pretence is there for that Plea in this caſe, where the foundations of our Monarchy have been unanimouſly acknowledg'd by many different Parliaments, in many different Ages, choſen at firſt from the Dictates of Reaſon, and confirm'd, after we had in many Rebellions, found how dangerous all thoſe popular pretences are, and in which we agree with the Statesman, Lawyers and Divines of all the well-Govern'd Nations under Heaven, who are born under an hereditary Monarchy, as it is confeſs'd we are.

To return then to the firſt of thoſe Points, I lay down as my firſt Poſition, that our Monarchs derive not their Right from the People, but are abſolute Monarchs, deriving their Royal Authority immediately from God Almighty; and this I ſhall endeavour

vour to prove, firſt from our poſitive Law.

By the 2. *Act Par.* 1. *Ch.* 2*d.* in which it is declar'd, that His *Majeſty*, His Heirs and Succeſſors, have for ever, by vertue of that Royal Power which they hold from God Almighty over this Kingdom, the ſole choice and appointment of Officers of State, Counſellors and Judges.

But becauſe this Act did only aſſert that our Kings did hold their Royal Power from God, but did not exclude the people from being ſharers in beſtowing this Donative, therefore by the 5*th.* *Act* of that ſame *Parliament*, they acknowledge the Obligation lying on them in Conſcience, Honour and Gratitude, to own and aſſert the Royal Prerogatives of the Imperial Crown of this Kingdom, which the Kings Majeſty holds from God Almighty alone; and therefore they acknowledge that the Kings Majeſty only, by vertue of His Royal Prerogative, can make Peace and War, and Treaties with forraign Princes.

Becauſe this laſt Statute did only aſſert that the King did hold His Imperial Crown from God alone, but did not decide from whom our Kings did only derive their Power; therefore by the 2*d.* *Act Par.* 3*d.* *Ch.*

Ch. 2d. It is declar'd that the Estates of Parliament considering that the Kings of this Realm, Deriving their Power from God Almighty alone, they do succeed Lineally thereto, *&c.* Which Statutes do in this agree with our old Law; for in the first Chapter of *Reg. Magist. verf.* 3. these Words are, That both in Peace and War, our Glorious King may so Govern this Kingdom committed to Him by God Almighty, in which He has no Superiour but God Almighty alone, which Books are acknowledg'd to be our Law, and are called the Kings Laws by the 54*th. Act Par.* 3*d. Jam.* 1. and the 115. *Act Par.* 14. *Jam.* 3.

These our Laws both Ancient and Modern, can neither be thought to be extorted by force, nor enacted by flattery, since in this we follow the Scripture, the Primitive Church and their Councils, the Civil Law and its Commentators, and the wisest Heathens, both Philosophers and Poets. As to the Scripture, God tells us, *That by him Kings Reign, and that he hath anointed them Kings, and that the King is the Minister of God.* *David* tells us, *That God will give strength to his King, and deliverance to his King, and to his Anointed*

ed. . *Daniel* ſayes to *Nebuchadnezar*, *The God of Heaven hath given thee a Kingdom.* And to *Cyrus*, *God gave to Nebuchadnezar thy Father a Kingdom, and for the Majeſty that he gave him, all Nations trembled.*

As to the Fathers, *Auguſtin de Civit. Dei*, *l.* 5. *c.* 21. *Let us not attribute unto any other, the Power of giving Kingdoms and Empires, but to the true God. Baſil* in *Pſal.* 32. *The Lord ſetteth up Kings and removeth them.* Tertul. *Apol: contra gentes, Let Kings know, that from God only they have their Empire, and in whoſe power only they are.* And *Irenæus* having Prov'd this point fully, ends thus, *l.* 5. *c.* 24. *By whoſe Command they are born men, by his likewiſe they are ordain'd Kings.* This is alſo acknowledg'd by the Councils of *Toledo* 6. *c.* 14. of *Paris* 6. *c.* 5. *vid. Council aquis gran.* 3. *c.* 1.

Amongſt late Divines, *Marca* the famous Arch-Biſhop of *Paris*, *Concord. ſacerd. & imperii*, *l.* 2. *c.* 2. *n.* 2. aſſerts, *That the Royal Power is not only beſtowed by God, but that it is immediatly beſtowed by God upon Kings*: and Refutes *Bellarm. de laico*, *c.* 6. maintaining, *That the Jeſuits Doctrine in this, leſſens Authority, and raiſes*

raiſes Factions, and contradicts both the Deſign and Word, of God. *Duvalius de ſuprem. poteſt. Rom. Pontif. p.* 1. *q.* 2. Aſſerts that Kings derive their Rights by the Laws of God and Nature, *non ab ipſa Republica & hominibus*; and in all this the Fanaticks and Republicans agree with the Jeſuits againſt Monarchy.

In the Civil Law this is expreſly aſſerted, *Cod. de vet. Cod. enucleand. Deo auctore noſtrum gubernante imperium quod nobis a cœleſti majeſtate traditam eſt, Nov.* 6. *in init. Nov.* 133. *in proem. in Nov.* 8c. 85., 86. *Juſtinian* acknowledges his Obligation to care for his People, becauſe he received the Charge of them from God, and certainly Subjects are happier, if their Kings acknowledge this, as a duty to God, than if they only think it a Charge confer'd on them by their People, and that they are therefore anſwerable to them.

That the Doctors and Commentators are of this opinion, is too clear to need Citations, *vid. Arnis. cap. de Eſſentia Majeſt. Granſwinkel. de jur. Maj. cap.* 1. *&* 2.

As to the Heathens, *Heſiod.* in *Theog.* ver. 96. ſays ἐκ δὲ διὸς βασιλῆες· Kings are from God. *Homer* ſayes their Honour is from

God, τιμὴ δὲ ἐκ διός —— *Iliad.* 1. verſe 197. *Themiſtius* aſſerts, that the Regal Power came from God, *Orat.* 5. whith whom agrees *Dion.* Chryſoſtom *Orat.* 1. *diotog. apud Stob. ſerm.* &c. *Plat. de legibus.* &c. But above all, *Ariſtotle in polit.* ἐι ἀρχὴν ἔχων ἀνάταξεν ὃ δεῖ ἀντιλεγῆναι· And *Plutarch. Agis & Cleom.* ὃ θεμιτὸν ὠδὲ νόμιμον βασιλέως τὰς χεῖρας προσφέρειν·

If to theſe Statutes and Citations it be anſwered, That God Almighty may indeed be the principal and chief Author of Monarchy, and that Monarchs may derive their Power from him, as from the Supream Being, that directs all more immediate Cauſes, and yet the People may be the immediate Electors of Monarchs, and ſo Kings may derive immediately from them their Power; and thus theſe Statutes are not inconſiſtent with the principle laid down by *Buchannan* and others, whereby they aſſert, That Kings in general, and particularly the Kings of *Scotland*, derive their Power immediately from the People.

To this my anſwers are, that firſt, If we conſider the propriety of the Words, there can be nothing more inconſiſtent, then that Kings ſhould derive their Power from God Almighty alone, and yet that they

they ſhould derive it from the People, for the Word *Alone*, is of all other words the moſt *excluſive*. 2*dly*, The deſign of the Parliament in that acknowledgement was to condemn, after a long Rebellion, the unhappy Principles which had kindled it; and amongſt which, one of the chief was, that our Kings derived their Power from the People, and therefore they might qualifie, or reſume what they at firſt gave, or might oppoſe all Streaches in the Power they had given, and might even puniſh, or depoſe the King when he tranſgreſſed, none of which Prineiples could have been ſufficiently condemned, by acknowledging that, though God was the chief Author, yet the People were the immediate Electors. 3*dly*, There needed no Act of Parliament be made for acknowledging God to be the chief Author, and firſt Fountain of every Power, for that was never controverted amongſt Chriſtians. 4*thly*, That fooliſh gloſſe cannot at all conſiſt with the Inferences deduced from that Principle in the former Statutes: for in the 2. *Act*, *Par.* 1. *Char.* 2. It is inferr'd from His Majeſties holding His Royal Power from God alone, that therefore he hath the ſole choice of his own Of-

ficers of State, Privy Counſellors and Judges; And in the 5*th. Act*, it is inferr'd from the ſame Principle, that becauſe he derives his Power from God alone, that therefore it is Treaſon to riſe in Arms without his Conſent, upon any pretext whatſoever: and in the 2*d. Act*, *Par.* 3. *Char.* 2. It is concluded, that becauſe our Kings derive their Power from God Almighty alone, therefore it is Treaſon in the People to interrupt, or divert their Succeſſion, upon any Difference in Religion, or other pretext whatſoever; whereas all this had been falſe, and improper Reaſoning, if the deſign of the Parliament had not been to acknowledge that our Kings derived not their Power from the People for though they derived their Power from, God, as the ſupream Being only, and not as the immediate beſtower, and if the People were the immediat beſtowers of that Power, then the People might ſtill have pretended, that they who gave the Power, might have riſen in their own Defence when they ſaw the ſame abuſed, and might have diverted the Succeſſion, when it deſcended upon a perſon who was an enemy to their Intereſt: but how falſe this gloſſe is, will appear more fully from the following

lowing Arguments; and it is absolutely inconsistent with St. *Augustins* opinion, formerly cited, wherein he forbids to attribute the giving of Kingdoms to any other but to God.

My second Argument for proving that Kings derive their Power from God alone, and not from the People, shall be from the principles of Reason. For *First*, The Almighties design being to manifest his Glory, in Creating a World, so vast and regular as this is, and his goodness in Governing it, and that Men might live peaceably in it, having both Reason and Time to Serve him, it was consequential that he should have reserved to himself the immediate dependence of the supream Power, to shut out the extravagant and restless multitude, from those frequent Revolutions which they would make, and Desolations which they would occasion, if they thought that the Supream Power depended on them, and that they were not bound to obey them for Conscience sake; so that those expressions in Scripture were very useful in this to curb our Insolencies, and to fix our restlesness; and it seems that Kings are in Scripture, said to be gods, to the end it might be

clear that they were not made by Men. 2*dly*, God Almighty being King of Kings, it was juſt, that as inferiour Magiſtrates derived their Power from the King, ſo Kings ſhould derive their Power from God, who is their King; and this ſeems to be clear from that analogy, which runs in a Dependence, and Chain through the whole Creation. 3*dly*, as this is moſt ſuitable to the principles of Reaſon, ſo it is moſt conſonant the analogy of Law, by which t is declar'd, that no Man is maſter of his own Life or Limbs, *nemo eſt Dominus membrorum ſuorum*; and therefore, as no Man can lawfully take away his own Life, ſo neither can he transfer the power of diſpoſing of it to any other Man; and conſequently this Power is not derived to Kings and Princes by privat Men, but is beſtowed upon them by God Almighty; who is the ſole Arbiter of Life and Death, and who can only take it a away, becauſe he gave it: And if it be objected, that this laſt branch of the Argument, ſeems either to prove nothing, or elſe to prove that there can be no Elective Monarchies. To this it is anſwered, that even in Elective Monarchies, the Nomination proceeds only from the People, but the Royal

al Power from God, as we ſee in inferiour Magiſtracies, ſuch as Burrows Royal, *&c.* the People Elect, and ſo the Nomination is from them, but the power of Governing proceeds from the King, and not from the Electors, and therefore as the People who Elected the Magiſtrates in theſe Towns, cannot Depoſe them by their own Authority; ſo neither can the People Depoſe their King, but the puniſhment of him belongs to God Almighty. I confeſs, that if the People Chooſe a King with expreſs Condition, that they may puniſh him as the *Lacedæmonian* Kings were puniſhable by thoſe Magiſtrates, call'd the *Ephori*, the Kings are in that caſe accountable to the People, but then they are not Monarchs, having ſupream Power as our Kings have, and who are therefore declar'd to hold their Power immediately from God, and not to be at all puniſhable by the People.

The 4*th* Argument that I ſhall uſe, for proving that our Kings derive not their power from the People, ſhall be from the natural Origin of Monarchy, and of ours in particular, which I conceive to be that Right of Paternal Power which is ſtated in them; for underſtanding where-

of, it is fit to know, that God at first created only one Man, that so his Children might be Subject to him, as all Children yet are to their Parents: and therefore the Jesuitical and Fanatical Principles, that every man is born Free, and at Liberty to choose what form of Government he pleaseth, was ever, and is most false, for every man is born a Subject to his own Parents, who, if they were not likewise subject to a Superiour Power, might judge and punish them Capitally, lead them out to War, and do all other things that a King could do, as we see the Patriarchs did in their own Families. And as long as it is known who is the Root of the Family, or who represents it, there is no place for Election, and people Elect only when the memory of this is lost, and such as overcome the Heads of Families in Battle, succeed to them in their Paternal Right

If it be answered, that the Father may by nature pretend to a power over his Children, or it may be an Elder Brother over his younger, yet there is no tye in nature subjecting Collaterals, as Uncles, and their descendents to those descended from the Eldest Family. To this I reply, that 1. This power over all the Family

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was justly given by nature, to shun divisions, for else every little Family should have erected it self in a distinct Government, and the weakest had still been a Prey. 2. We see that *Abraham* did lead out to War, and in every thing act as King, not only over his own Children, but all the Family, and whole Nations, are call'd the Children of *Israel*, the Children of *Edom*, *&c.* 3. That must be concluded to be establish'd by natural instinct, which all men in all Ages and Places allow and follow; but so it is, that all Nations in all Places, and Times have ever allow'd the Eldest Son of the Eldest Family to govern all descended from the Stock, without new Elections; and the Author of the late famous *Moral Essayes* hath admir'd this as one of the wisest Maxims that we have from Natural Instinct; for if the wisest, or strongest were to be chosen, there had still been many Rivals, and so much Faction and Discord; but it is still certain who is the Eldest Son, and this shuts out all Debate, and prevents all Dissention: For applying this to our Case, it is fit to know, that if we believe not our Historians, then none else can prove that the People of *Scotland* did at first Elect a King that being contrary to the acknowledgement

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ledgements of our own Statutes and all *Buchannans* Arguments, for reſtraining Kings, being founded upon the authority of our Hiſtorians, who (as he ſayes,) aſſert that K. *Fergus* was firſt Elected King by the People: if he be not able to prove that our Kings owe their Crowns to the Election of the People, without any inherent or previous Right, all his Arguments vaniſh to nothing: but on the other hand, if we conſider exactly our Hiſtorians, we ſhall find that our Kings Reign over us by this Paternal Power; and though I am not very fond of Fabulous Antiquities, yet if Tradition, or Hiſtories can be believ'd in any thing, they ſhould at leaſt be believ'd againſt *Buchannan*, and thoſe who make uſe of them, to reſtrain the power of our Kings: and by our Hiſtories it is clear, that *Gathelus* having led ſome Forces into *Egypt*, he after ſeveral Victories, ſetl'd in *Portugal*, call'd from him *Portus Gatheli*, from which a Colony of that Race tranſported it ſelf into *Ireland*, and another into *Scotland*; nor ſhould this be accounted a Fable, ſince *Cornelius Tacitus*, in the Life of *Agricola*, makes the *Scots* to be of *Spaniſh*, and the *Picts* to be of *German* Extraction.

The *Scottiſh* Colonies finding themſelves

ſelves oppreſt by the *Britains*, and *Picts*, they ſent over into *Ireland* to *Ferquhard*, and he ſent them a conſiderable Supply, under the Command of *Fergus* his Son, who having ſecur'd them againſt their Enemies, all the Heads of the Tribes acknowledged him for their King, and ſwore that they ſhould never admit of any other Form of Government then Monarchy; and that they ſhould never obey any except Him and his Poſterity, which if they brake, they wiſh'd that all the Plagues and Miſeries that had formerly fallen on their Predeceſſors, might again fall upon their Poſterity, as the puniſhment of that Perjury. All which Religious Vows and Promiſes ſeal'd by thoſe dreadful Oaths voluntarly given, were graven on Marble Tables, and Conſign'd for preſervation into the cuſtody of their Prieſts: and theſe are *Boetius* own words, *Fol.* 10. From which I obſerve, 1. That as our Laws aſſert, that our Kings derive their Power from God, and not from the People, ſo we ought not to believe the contrary upon the Faith of our Hiſtorians, except they were very clear, and unanimous in contradicting our Laws, whereas it appears to me, that our Laws agree with our Hiſtory, for *Gathelus* was not at all

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Elected by the People, but was himſelf the Son of a King, and did conquer by his own Subjects, and Servants, and all thoſe who are deſcended from his Collonies, were by Law oblig'd to obey the Eldeſt Son, and Repreſentative of that Royal Family. And *Ferquhard* is acknowledg'd to have been his only Succeſſor, nor did ever any of the *Scotiſh* Tribes pretend to the Supremacy, and our Hiſtories bear, that none of our Tribes would yield to another; and the Fatal Marble Chair that came from *Spain*, remaining with thoſe who went to *Ireland*, does evince that the Birth-right remain'd with them; and therefore when *Fergus* the Son of *Ferquhard* came over, he brought over with him the Marble Chair, which was the mark of Empire. And *Boetius* immediately upon his arrival calls him King, and *Fordon* the moſt ancient of our Hiſtorians, *lib.* 1. *cap.* 36. calls him, *Ferguſius Filius Ferardi aut Ferquhardi ex antiquorum Regum proſapia genitus, qui ambitione Regnandi ſtimulatus magnam ſibi Juvenum copiam aſſimulavit & Albionem continuo progreſſus eſt & ibidem ſuper eos Regem primum ſe conſtituit*, that is to ſay, he made himſelf the firſt King; therefore *K. James. Baſil. Doron.* pag. 201.

201. aſſerts, that *K. Fergus* made himſelf King and Lord as well of the whole Lands, as of the whole Inhabitants. 2. We read nothing at all of the conſent of the People, but of the Heads of the Tribes, who had no Commiſſion from the People, each of them having by his Birth-right a Power to Command his own Tribe, and conſequently, the Royal Power was not derived to *Fergus* from the People, but had it's Original from this Birth-right that was both in them, and *Fergus*, and he ſucceeded in the Right of thoſe Chiefs to Command their reſpective Families; and *Boetius* brings in King *Fergus*, *lib.* 1. *num.* 5. Speaking of himſelf, as a pious Parent, as one who owes to them what a Parent owes to his Children: *ſunt pij Parentes in Liberos propenſi, & debemus vobis quod proli genitores.* And the conſent given by the Chief of the Clanns, and the People did not give, but declare the former Right, as our conſent now does in Acts concerning the Prerogative, and as the Vote of the Inqueſt does in the Service of Heirs; and thus at the Coronation of our Kings, it is ſtill ſaid by our Hiſtorians, that ſuch a man was declared King, *communi ſuffragio & acclamatione.* 3. This con-

conſent being only given in the Army cannot be ſaid to have been univerſally by the People, nor do we read that the People did Comiſſionate the Army, or that the Army conſulted the People; and in general it cannot be inſtanc'd, that the People did in any Nation univerſally conſent to Election, nor is it poſſible all the People can meet. And in *Poland* which is the only Elective Monarchy we know, the Free-holders only conſent, and yet every private Man and Woman have as great intereſt, according to theſe pretended Laws of Nature, as they have: *& potior eſt conditio negantis.* Nor do we find that the Commons, and mean People have any intereſt in the Elections of our Magiſtrates, or Parliament Men; ſo that Popular freedom by Birth, and the intereſt of the People in Popular Elections are but meer Cheats invented to engage the Rabble, in an averſion to the eſtabliſh'd Government, when factious and inſolent Spirits, who cannot ſubmit themſelves to Government, deſign to cheat the Multitude by fair Pretences, and to bribe them by Flattery.

If it be pretended, that it is not certain, whether King *Fergus* was eldeſt Son to *Ferquhard*, nor is it probable, that if he had

had been ſuch, he would have preferr'd an uncertain Conqueſt in *Scotland*, to his ſecure Succeſſion in *Ireland*. To this it is anſwered, that all our Hiſtories bear, that King *Ferquhard* ſent his Son *Fergus*, and when a Son is ſpoken of indefinitly, in ſuch Caſes, he is actually underſtood to be the Eldeſt. 2. He brought with him the Marble Chair, the mark of Empire, which would not have been allow'd to a younger Brother. 3. It is ſaid, that having ſettled the affairs of *Scotland*, he returned into *Ireland* to ſettle the differences there about the chooſing of a new King, which does import that he ſhould have been King if he had not prefer'd *Scotland* to *Ireland*; and the reaſon of this preference was becauſe *Ireland* was then divided amongſt many Kings, and his Predeceſſors had but a very ſmall ſhare of it at that time, and *Scotland* being a part of a greater Iſle, be probably found in this greater Iſle, a higher flight for his Hopes and more latitude for his Ambition.

But albeit the Kings of *Scotland* had been originally and at firſt Elected by the People, yet it does not at all follow neceſſarly as *Buchannan*, *Dolman*, and our other Republicans pretend, that therefore they may reject them at their pleaſure, or which

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is all one, when they imagine that the Kings Elected by them ſerve not the ends for which they were deſigned, and that for theſe Reaſons. 1. It cannot be deny'd, but that the People may conſent to an Election of a Monarch without Limitations; for from the Principles of Nature, we may learn, that whatever is in ones power may be by them transfer'd upon another; and therefore, if the People be inveſted with a power of governing themſelves, they may cartainly transfer this Power upon another and we ſee that all Chriſtians, and even our Republicans allow, that men may ſell themſelves to be Slaves, a cuſtom not only mention'd but approv'd by God himſelf, ſo far does conſent reach beyond what is neceſſary for maintaining this Point. 2. If this could not be, then there could be no ſuch thing as abſolute Monarchies, which is againſt the receiv'd Opinion of all Nations, and againſt the Doctrine of all Authors, who, though they debate that this, or that Monarchy, in a particular Countrey is not Abſolute, yet it was never controverted by any man alive, but that the People m ght conſent, and in many places have conſented to abſolute Monarchies; and by the famous *Lex Regia*

Regia, amongſt the *Romans*, *Populus ei & in eum omne Imperium ſuum, & Poteſtatem tranſtulit, inſtit. de jur. nat. gent. & civ.* §. 6. Mention'd likewiſe by that Famous Lawyer *Ulpian*, *l.* 1. *ff. de conſtitut. Princ.*

3. We ſee this conſequence to be very falſe in many other caſes, and therefore it cannot be neceſſary here, for we find that a man chooſes a Wife, yet it is not in his power to put her away; Cardinals chooſe the Pope, and Chapters the Biſhop, and yet they cannot depoſe them; the Common Council chooſe Magiſtrates, and yet they cannot lay them aſide.

4. This Reaſoning is condemn'd as moſt fallacious, by moſt learn'd, and diſintereſted Lawyers, and therefore it cannot be infallible, as is pretended: *vide Arniſæum cap.* 3. *num.* 2. *Hænon. dis. Pol.* 9. *num.* 44. *Panorm. ad cap.* 4. *de Cler. non reſidend. Zaſius ad l. non ambigitur num.* 3. *ff. de legibus.* Nor have any Lawyers differ'd from this common opinion of mankind, except ſome very few, who have differ'd from a Principle of Pique, rather than of Judgment.

The next thing that I am to prove in this my firſt Propoſition, is, That Our

King is an abſolute Monarch, and has the Supream Power within this his Kingdom and this I ſhall endeavour to prove, *Firſt*, From our poſitive Law. 2. By ſeveral Reaſons deduc'd from our Fundamental Laws and Cuſtoms. 3. From the very nature of Monarchy it ſelf, and the Opinion of Lawyers who write upon that Subject, and who define Abſolute Monarchy to be a Power that is not limited or reſtrained by coactive Law. *Arniſæus, de eſſentia Majeſt. cap. 3. num. 4.*

By the 25. *Act Parl.* 15. *Ja. 6.* The Parliament does acknowledge, *That it cannot be deny'd, but his Majeſty is a free Prince, of a Soveraign Power; having as great Liberties and Prerogatives, by the Laws of this Realm, and Priviledge of his Crown, and Diadem, as any other King, Prince, or Potentate whatſoever.* And by the 2. *Act. Parl.* 18. *Ja. 6.* The Parliament conſenting to his Majeſties reſtoring of Biſhops, declare and acknowledge the abſoluteneſs of our Monarchy, in theſe words: *The remedy whereof properly belongs to his Majeſty, whom the whole Eſtates, of their bounden duty, with moſt hearty and faithful affection, humbly and truly acknowledge to be a Soveraign Monarch, abſo-*

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lute Prince, Judge and Governour, over all Perſons, Eſtates and Cauſes, both Spiritual and Temporal, within his ſaid Realm.

And by the firſt Act of that ſame Parliament: *The Eſtates and whole Body of thispreſent Parliament, acknowledge all with one voluntary, humble, faithful, united heart, mind, and conſent, his Majeſties ſoveraign Authority, Princely Power, Royal Prerogative, and Priviledge of his Crown, over all Perſons, Eſtates, and Cauſes whatſoever, within his ſaid Kingdom.*

And becauſe no Acts were ever made giving Prerogatives, nor even declaring Prerogatives to have been due, until ſome ſpecial controverſie did require the ſame, ſo that Poſſeſſion, and not poſitive Law, was the true meaſure of the Prerogative; therefore the Parliament doth in that ſame Act approve, and perpetually confirm all the Royal Prerogatives, as abſolutely, amply and freely in all reſpects, and conſiderations, as ever his Majeſty, or any of his Royal Predeceſſors poſſeſſed, uſed, and exerciſed the ſame; and they promiſe that his Majeſties Imperial Power, which God has ſo enlarg'd, ſhall never be in any ſort impair'd, prejudg'd, or diminiſh-

ed, but rather reverenc'd, and augmented as far as poſſibly they can.

In the Preface to our Books of Law, call'd *Regiam Majeſtatem*, it is acknowledg'd that the King has no Superiour, except the Creator of Heaven and Earth, who governs all. Forreign Lawyers alſo, ſuch as *Lanſius de Lege Regia*, *num.* 49. and others, do number the King of *Scotland* amongſt the Abſolute Monarchs.

My ſecond Argument for proving our King to be an abſolute Monarch, ſhall be from my former poſition, wherein I hope I have prov'd ſufficiently, that our Kings derive not their Right from the People; for if the King derive not his Power from the People, the Monarchy can never be limited by them, and conſequently it muſt be an abſolute Monarchy; for, there could be nothing more unjuſt, more unnatural, and more inſolent, then that the People ſhould pretend a Right to limit and reſtrain that Power which they never gave; and the only reaſon why *Buchannan*, and his Complices, do aſſert our Monarchy to be a qualified and limited Monarchy, being that the People, when they firſt Elected our Kings, did qualifie and reſtrain their Govern-

Government. This poſition being falſe, as appears by the abſolute Oath, and original Conſtitution above ſet down, which is leſſened, or qualified by no condition whatſoever, therefore the concluſion drawn from it muſt be falſe likewiſe.

The third Argument ſhall be deduced from the Nature of Monarchy, and in order thereto, I lay down as an uncontroverted principle, that every thing muſt be conſtructed to be perfect in its own Nature, and no mixture is preſum'd to be in any thing; but he who alledges, that the thing controverted is added againſt Nature, muſt prove the ſame; and therefore ſince Monarchy is that Government whereby a King is Supream, the Monarch muſt be preſum'd, neither to be oblig'd to Govern by the advice of the Nobility, (for that were to confound Monarchy with *Ariſtocracie*) nor by the advice of the People (for that were to confound it with *Democracie*;) and conſequently if *Buchannan*, and others deſign to prove, that our Kings are obliged to Govern, by the advice either of the Nobility, or People, or are ſubject to be Chaſtiſed by them, they muſt prove, that our Kings, at their firſt Creation, were Elected upon theſe Con-

ditions, the very Eſſence and Being of Monarchy, conſiſting in its having a Supream and abſolute Power. *Arniſæus c.* 30. *Vaſquez l.* 1. *Controv. c.* 47. *Budæus* in *l. princeps. Zas. ibid. ff. de legibus, pone enim* ſays *Arniſæus, populum in Regem habere æqualem poteſtatem neutrum pro ſummo venditari poſſe.* When we hear of a Monarch, the firſt notion we have is, that he is a Subject to none; for to be a Subject and a Monarch, are inconſiſtent; but if we hear that his Nobility, or People, or both, may Depoſe, or puniſh him, we neceſſarily conclude by the Light of Nature, that They, and not He, are the ſupream Governours. Thus we ſee, that in allowing our King to be an abſolute Monarch, we have only allow'd him to be a Monarch, and to have what naturally belongs to him, and that by as neceſſary a conſequence; for as every Man is preſumed to be reaſonable, becauſe reaſon is the Eſſence of Man, ſo is a King preſum'd to be abſolute, except theſe limitations whereby the Monarchy is reſtrained, could be prov'd by an expreſs Contract.

4*thly*, How is it imaginable, but that if our Predeceſſors had Elected our Kings upon any ſuch Conditions, but they would have been

been very careful to have limited the Monarchy, and this Contract had with these conditions been recorded; whereas on the contrary we find, that albeit great care was taken to record the Oath of Allegiance made to the King, and to grave the same upon Marble Tables, consign'd unto the custody of their Priests, as sacred Oracles; yet none of all our Historians make the least mention of any limitations in these Oaths, or by any other Contract; and to this day our Oaths of Supremacy, and Allegiance, are clogged and lessened by no limitations.

If it be answered, that these limitations do arise from the nature of the thing it self, there being nothing more unreasonable, and contrary to the nature of Government, than that a Monarch, who was design'd to be a Protector to his People, should be allow'd to destroy them. To this it is answered, That Monarchy by its nature is absolute, as has been prov'd, and consequently these pretended limitations are against the nature of Monarchy and so arise not, *ex natura rei*, nor can there any thing be more extravagant, than to assert that, that which is contrary to the nature of Monarchy, should arise from

its nature, and it might be with greater reaſon pretended, that becauſe the great deſign of men in Marriage, is to get a Helper, that therefore they may repudiate their Wives, when they find them unſupportable, and that the putting them away in ſuch caſes, is conſiſtent enough with the nature of their Oath, though ſimple, and abſolute; this cauſe of Divorce ariſing from the nature of Marriage it ſelf: This is after Vows to make Inquiry, and what Vow or Oath could be uſeful, if the giver were to be Judge how far he were ty'd, and if his conveniency were the meaſure of his Obligation. But ſince I ſhall hereafter fully prove, that theſe limitations are as dangerous to the Subjects, as to the Prince, and that ten thouſand times more Murders, and other Inſolencies have been committed in Civil Wars, upon the falſe pretence of Liberty, than ever was committed by the worſt of Kings; it muſt neceſſarily follow, that thoſe limitations ought not to be admitted after an abſolute Oath, for ſhunning inconveniences, which at the ballance appear, to be no weight.

5. It cannot be denyed, but our Kings have ever had the Power of Peace and War, the calling and diſſolving of Parliaments,

ments, and a negative Voice in them, the remitting of Crimes, and nomination of Judges; and therefore it must be presumed, that since the Law has not limited them in those things, it has limited them in nothing; for by involving us in War, they may expose our Fortunes, our Wives and Children to the greatest of dangers; and it had been great folly to limit them in any thing, after those great Prerogatives were allowed: And though our Histories do bear, That Peace and War were ordinarily determined by the advice, and consent of the Nobility, yet that does no more infer a necessity not to do otherwayes, than the ordinary stile of all our Proclamations, bearing to be with advice of our Privy Council, infers a necessity upon the King to do nothing without their advice; and how could the consent of the Nobility have been necessary in the former Ages, since all their Right flowed from the King Himself, and that neither they then, nor the Parliament now, had, or have a Power equal with the King, much less above Him, as shall be fully proved in the first Conclusion, that I am to draw from this Doctrine; only to what I have said, I must here add, that

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it being propoſed to our Predeceſſors, at the ſwearing the Oath of Allegiance to King *Fergus*, Whether they would be govern'd by a King, who ſhould have abſolute Power, or by the Nobility, or by a Multitude? it was anſwered, That leſt they ſhould have many Kings in place of one, they abhorr'd to beſtow the Abſolute Power either upon the Nobility, or upon the Multitude.

6. I cannot but exceedingly commend our Predeceſſors, for making this reaſonable choice of an abſolute Monarchy; for a Monarch that is ſubject to the impetuous caprices of the Multitude when giddy, or to the incorrigible Factiouſneſs of Nobility when intereſted, is in effect no Government at all; and though a mixt Monarchy may ſeem a plauſible thing to Metaphyſical Spirits and School-men, yet to ſuch as underſtand Government, and the World, it cannot but appear impracticable; for if the People underſtand that it is in their Power to check their Monarch, the deſire of command is ſo bewitching a thing, that probably they will be at it upon all occaſions, and ſo when the King commands one thing, the Nobility will command another, and it may be the People

People a third. And as it implies a contradiction, that the ſame Perſons ſhould both command and obey: ſo where find we thoſe ſober and mortified men, who will obey, when they may command? Let us conſider what dreadful extravagancies, and cruelties appear'd at *Rome*, betwixt the Tribunes of the People, and the Senate: one of ſix Kings had a Son, who raviſh'd a Woman, and thereupon the Kings were expell'd, but every year almoſt produced a Civil War, wherein vaſt numbers of free *Romans* were murther'd; and in the conteſt betwixt *Sylla* and *Marius*, 90 Senators, 15 Conſuls, 2600 Gentlemen, and 100000 others were murther'd, and after the whole Common-wealth was exhauſted in the Wars betwixt *Cæſar* and *Pompey*; and in the immediate ſucceeding War betwixt *Auguſtus*, *Anthonie*, and *Lepidus*, wherein every man loſt either a Brother, a Father, or a Son, *Rome* return'd again to its Monarchy, and was never ſo happy, as under *Auguſtus*. The People of *Naples* complaining lately of their Taxes, put themſelves under the Command of Reforming *Maſſaniello*, by whoſe extravagancies they ſuffer'd more in one Moneth, than they had done under the *Spaniſh*

niſh cruelty in an hundred years. But our late Reformation in *Britain* ſeems to have been permitted by God, to let us ſee that mixed Governments having power to Reform Kings, are more inſufferable than Tyranny; for by it we ſaw that the multitude conſiſts of Knaves and Fools, and both theſe are the worſt of Governors; that the beſt of Kings will be thought wicked, when Subjects are his Judges, who reſolve not to obey, and that it is impoſſible to know what is right, when every man is Judge of what is wrong. The impracticableneſs likewiſe of this popular Supremacy, will yet more convincingly appear, if we conſider that the People are to be Judges, becauſe of their natural freedom, for then all men ſhould have equal right to be Reformers, and theſe can never meet nor conſult together: And if it be anſwered, that the People may ſend their Repreſentatives, my Reply is, that the greateſt half of the Nation are neither Freeholders nor Burgeſſes, and yet thoſe only are call'd the Repreſentatives of the people; and what abſurd Tricks and Cheats are us'd in chooſing even thoſe Repreſentatives, and it may be the reſolution prevails by the Vote of the greateſt Fool or Knave in the Meet-

Meeting; and if any one man remove by ſickneſs or accident, at the paſſing of a Vote; or if any of the multitude be brib'd, or have prejudice, though on a moſt unjuſt account, that which would have been the intereſt of the Nation, turns to be againſt it, ſo infallible a Judge is the multitude. And I have ſeen in popular Elections, hundreds cry for a thing, and thereafter ask what was the matter.

7*ly*, If the *Proceres Regni*, or Nobility are to be the check upon our Kings, and to be truſted with this coercive power of calling them to an account, as *Buchannan* pretends; then I deſire to know who inveſted them with this power, for it was never pretended that it is naturally inherent in them: And if the people inveſted them, I deſire to know by what *Act* the people transferr'd this power upon them, for they have no Law, nor original Conſtitution for this, as our Kings have for their Right; and paſſing over the dangers may ariſe from their having this power, becauſe of the Factiouſneſs, Poverty, Picques, Humors, or Ignorance that may be incident to them; it ſeems to me ſtrange, why we the people ſhould truſt ſuch to be our Checks over the King, who are His own

own Creatures, owing their Honours to Him, and expecting dayly from Him Imployments and Eſtates? and if they and the people differ, who is to be Judges of thoſe Controverſies? Nor can the Nobility and Commons aſſembled in Parliament have this coercive power, for the Reaſons which I ſhall hereafter offer; and therefore none has it, but the King is Supream in himſelf, and accountable to none, ſave God Almighty alone. But more of this will be found in the Sequel of this Diſcourſe, upon other occaſions.

8ly, Whatever proves Monarchy to be an excellent Government, does by the ſame Reaſon prove abſolute Monarchy, to be the beſt Government; for if Monarchy, be to be commended, becauſe it prevents Diviſions, then a limited Monarchy, which allows the People a ſhare, is not to be commended, becauſe it occaſions them; if Monarchy be commended, becauſe there is more expedition, ſecreſie, and other excellent Qualities to be found in it, then abſolute Monarchy is to be commended above a limited one; becauſe a limited Monarch muſt impart his ſecrets to the people, and muſt delay the nobleſt deſigns, until malicious and factious Spirits be either gain'd or over-

overcome: And the ſame analogy of Reaſon will hold in reflecting upon all other advantages of Monarchy, the Examination whereof I dare truſt to every mans own breaſt.

9*ly*, It was fit for the People that their Kings ſhould be above Law, becauſe the ſeverity of Law will not comply with that uſeful, tho illegal Juſtice which is requiſit in ſpecial caſes, for ſince *ſummum jus* is *ſumma injura*, and ſince *impoſſibile eſt ſola innocentia vivere*, we may well conclude, that abſolute Monarchy is neceſſary to protect the guilty innocent by Remiſſions, to break Laws juſtly, in a Court of Chancery, and to crook them uprightly in our Courts by an *officium nobile*. For ſtrict and rigid Law is a greater Tyrant, than abſolute Monarchy.

I know that ſome pretend that the 25. *Act* 15. *Par. Ja.* 6. declaring the King to be an abſolute Prince, is only to be interpreted in oppoſition to the Popes Authority, he being ſo far abſolute, only as not to be Subject to the Pope, who pretended then a Juriſdiction over all Kings. But the anſwers to this are clear; *Firſt*, This Statute is made to declare the Kings of *Scotland* to have Right by their Inherent Prerogative, to their exacting Cuſtoms for all Merchandiſe,

diſe, becauſe they are abſolute Monarchs; which Argument had been ridiculous, if this abſolutenes had only been in oppoſition to the Pope, nor is there any mention of the Pope in all this Statute; and what intereſt hath the Pope in our Cuſtoms. 2*dly*, When the Kings power is by our Statutes rais'd above the Pope, it is done by declaring him Supream, and not by declaring him abſolute. 3*dly*, All Lawyers, and Stateſ-men, divide Monarchies in abſolute and limited Monarchies, and the word Abſolute, is ſtill taken in oppoſition to limited, as is clear by *Arniſæus*, *Bodin*, *&c.* And whereas it is pretended that theſe words in this Statute, acknowledging the King to be abſolute, are only expreſt tranſiently and enunciatively, but are not Deciſive and Statutory. It is anſwered, that our Parliaments never give our Kings Prerogatives, but only acknowledge what our Kings have by an Inherent and Independent Right; and theſe words in this Statute, are of all others in our Laws, expreſt with moſt of Energy, for they are uſher'd with, *It cannot be deny'd, but His Majeſty has as great Liberties and Prerogatives, as any Monarch whatſoever*: and this acknowledgement is made the Foundation of His Right

Right to exact Cuſtoms. And in true Reaſoning, nothing is made the Propoſition of an Argument, but that which is moſt uncontrovertable.

I foreſee that our Fanaticks and Republicans, will be ready to miſrepreſent abſolute Monarchy, as Tyranny: But a Tyrant is he, who has no Right to Govern; and ſo he may be oppos'd, as the common Enemy of all the Society. And it is ridiculous to pretend with *Hobs*, *That we are oblig'd to obey whoever is once in poſſeſſion*; for that were to invite men to torment us, and to juſtifie Crimes by ſucceſs. Nor can it be from this deduc'd, that ſince it is lawful to oppoſe any who are in Poſſeſſion, that it is therefore lawful to oppoſe our Monarchy: becauſe they have (as *Algernon Sidney* pretends) *Uſurpt over us, a power inconſiſtent with our natural Liberty. And owe their Right to that Preſcription, which the greateſt Tyrants may maintain by force, and to that conſent which they may procure by Violence, or Flattery.* For to this I anſwer, That our Monarchs have their power eſtabliſht by Birth-right, by Conſent, by Preſcription, and by Law; which are all the ways whereby any Right can be legally Eſtabliſht. But it is a groſs

miſtake in *Buchannan*, and others, to conclude a lawful King puniſhable as a Tyrant, becauſe he becomes vitious: For though God may puniſh him as ſuch, yet his People cannot; that were to raiſe the Servant above the Maſter, and to occaſion a thouſand Diſorders to redreſs one; and when King *James* acknowledges, that a good King thinks Himſelf made for his People, and not His People for Him. That is only ſaid with reference to the King's duty to God, but not with Relation to the Peoples Duty to their King. And when *Trajan* delivering the Sword to the *Proconſul*, ſaid, *Pro me, ſi rectè impero, ſi male, contra me.* *Grotius* obſerves juſtly, *That this was ſpoke as a Philoſopher, and not to ſubject himſelf to the others Juriſdiction.* And ſo *Buchannan* did moſt traiterouſly adviſe the Printing this on our Coin. Nor do's this Title of abſolute Monarch, empower him to diſpoſe of our Eſtates. For it is fit to know, that Government is the Kings, and Property isthe Subjects Birth-right. Monarchy is a Government, and ſo can include no more, than what is neceſſary for Government. And though the *Turk* or *Mogol*, arrogate to themſelves, the total Property of their Subjects, in this they are Tyrants, and

not

not Kings. And when our Statute above-mentioned, ſays, *That our Kings have as much power as they*, this is only to be underſtood of what Right they have by the Nature of Monarchy, *Rex nomen eſt juriſdictionis non dominii*, ſay the Lawyers: For the Law having ſaid, that all things were the Emperours, *l. bene a Zenone. §. Sed ſcimus C. de Quadr. Præſcript.* The Emperour asked the famous Lawyer *Bulgarus*, in what ſenſe all was his, who is mightily prais'd for having anſwer'd, *Omnia Rex poſſidet imperio ſinguli dominio, Accurſ. in præm. ff. in Verb. Sanctioni* : For what is once ours, cannot be taken away without our conſent : And therefore by the 5. *Act*, 1. *Par. Ch.* 2. It is declared lawful for the King to make Gariſons, His Majeſty entertaining them on His own expence. And by the *Act* 3. *Par.* 3. *Ch.* 2. It is declar'd that the people ſhall not be ſubject to free Quarter, *&c.* And yet right reaſon teacheth us, that all the Land of *Scotland* having been once the Kings (for the Law ſaith, that the King is *Suſitus ratione Coronæ*, in all the Lands of *Scotland*) His Majeſty is therefore preſumed Proprietor of all, and every thing belongs to him, if ſome other cannot inſtruct a right, which is the ſenſe of that Law, *Nemo terram niſi authori-*

tate Regia poſſideto: And of King *Malcolm Canmor*'s Law, that *Rex diſtribuit totam Terram Scotiæ hominibus ſuis.* And it therefore clearly follows, that the King has *Dominium directum*, a right of Superiority, as all Superiors have, and that the people on whom he has beſtowed thoſe Lands, are oblig'd to concur in the expence with him, for the defence of it. For as if he had retain'd the Property, he would have been able with the Fruits and Rents to have defended it. So it is not agreeable to ſenſe or reaſon that they to whom he has granted it ſhould not be oblig'd to defend it, eſpecially ſeeing all the Rights made by the King, are in Law preſum d meer Donations; For it cannot be deny'd but that all Lands were originally granted by the King, and ſo muſt have originally belong'd to himſelf: for no perſon can give what is not his own; and our Law acknowledgeth, that all Lands belong to the King, except where the preſent Heretor can inſtruct a Right flowing from our King, and that he is the Fountain of Property, as well as of Juſtice. 2. In Law, all who are ingag'd in a Society, as to any thing that is the Subject of the Society, ſhould contribute to its preſervation; and therefore the King having the *Dominium directum*, and the Vaſſal *Dominium utile*, it follows, that the Vaſſals of the Kingdom ſhould con-

contribute towards its preſervation, and the King may expect juſtly an equal Contribution towards the defraying the neceſſary expence, and thence it was, that by our old Law all Heretors were obliged to furniſh ſome *unum Militem*, *unum Sagittarium*, or *Equitem*: Some a Bow-man, ſome a Souldier, ſome a Horſe-man: But afterwards the King having changed thoſe Tenures, or becauſe all betwixt 60. and 16. were obliged to come to the Field with 40. dayes Proviſion, which was all that was then neceſſary; it follows, that now that way of making War being altered, the Subjects ſhould contribute towards the way that is neceſſary for defending the Kingdom. 3. The King by His Forces protects our Perſons, and by his Navies protects our Commerce; by His Ambaſſadors manages all our publick Affairs, and by His Officers, and Judges, adminiſtrates Juſtice to us: And ſo it is juſt that all this ſhould be done at our expences, and that we ſhould defray the publick expences of the Government, and ſo much the rather, becauſe by a ſpecial Statute with us, it is declared that the King may impoſe what He pleaſes on all that is imported, or may forbid us to export any thing without which we could not live; and what ever he gets

from us, he diſtributes amongſt us, without applying one ſhilling of it to his own private uſe.

The King, or whoever has the management of the Government, have in the opinion of Lawyers, *Dominium eminens*, a Paramount and Tranſcendent Right over even private Eſtates, in caſe of neceſſity, when the common Intereſt cannot be otherwiſe maintained; and this *Grotius*, though no violent friend to Monarchy, doth aſſert very poſitively and clearly, *l.* 1. *c.* 1. § 6. & *l.* 3. *c.* 19. *num.* 7. and it cannot be denied but that a King may take any mans Lands, and build a Gariſon upon it, paying for it; and that in caſe of a Siege, the King may order whole Suburbs to be burnt down for the ſecurity of the Town: And whence is this power, ſave from that Paramount and Supereminent Right that the King has over all private Eſtates, for the good of the whole Society and Kingdom? Nor can it be denyed, but that the King may in time of War, Quarter freely; and it is in his power to declare War, when, or where he pleaſes: Nor do the former Statutes contradict this, for they exclude not Neceſſity that has no Law, and is it ſelf that Law which gave *David* right to eat the Shew-bread, and the Chriſtian

Chriſtian Emperours, right to ſell the Goods of the Church for maintaining their Armies, with conſent of the Primitive Fathers; and this is ſo neceſſarily inherent in all adminiſtration, that the very Maſter of a Ship has power to throw overboard the Goods of Paſſengers and Merchants in a ſtorm, for the preſervation of the Ship: And they are not enemies to the King only, but to themſelves, who would deny the King this power.

The third Claſſis of Arguments that I am to uſe againſt theſe Principles, ſhall be from Reaſon, and Experience to fortifie and corroborate our poſitive Law, and the nature of our Monarchy; for ſince humane Reaſon it ſelf is lyable to ſo many Errors; and ſince men when they differ, are ſo wedded to their own Sentiments, that few are ſo wiſe as to ſee their own miſtakes, or ſo ingenuous as to confeſs them, when they ſee them: Therefore Prudence and Neceſſity have obliged men to end all Debates by making Laws: and it is very great vanity and inſolence in any private men, to juſtify their own private Senſe againſt the publick Laws; that is to ſay, the Authoritative Sentiments, and the legal Senſe of the Nation.

If we were then to Eſtabliſh a new Monarchy, were it not prudent and reaſonable,

for us to conſider what were the firſt Motives which induced our Predeceſſors to a Monarchy; and *Boethius* and *Leſly* both tell us, That leſt they might be diſtracted by obeying too many, it was therefore fit to ſubmit to one; if then this Reaſon was of force at firſt to make us ſubmit to a Monarchy, it ſhould ſtill prevail with us to obey that Monarchy, and not gape idely after every new Model: *Ne multos Reges ſibi viderentur creare, ſummam rerum aut optimatibus, aut ipſi multitudini permittere aſpernabantur*, ſayes *Boethius*, *fol.* 6 Here the advantages of being govern'd by *Ariſtocracie*, or *Democracie*, were expreſly conſidered and rejected; ſo that we have our Predeceſſors choice, founded on their way of Reaſoning, added to the Authority of our Law; and after we their Succeſſors, had ſeen the miſchiefs ariſing from the pretences of Liberty and Property, with all the advantages that ſeeming Devotion could add to theſe. Our Repreſentatives, after two thouſand years experience, and after a freſh *Idæa* of a long Civil War, wherein the Arguments and Reaſons produced by *Buchannan*, were fortified and ſeconded by thouſands of Debates: They did by many paſſionate Confeſſions, and poſitive Laws acknowledge, That

That the preſent Conſtitution of our Monarchy, is moſt excellent, *Act* 1 *Par.* 1. *Char.* 2. That inevitable prejudices and "miſeries do accompany the invading the "Royal Prerogative, *Act* 4. That all the "troubles and miſeries they had ſuffered, "had ſprung from theſe Invaſions, *Act* 11. "That all the bondage they had groaned "under, was occaſioned by theſe Diſtrac-"tions, *Act* 2. *Par. Seſſ.* 2. *Ch.* 2. So that we have here alſo a Series of Parliaments, atteſting the reaſonableneſs of the Conſtitution of our Monarchy, and His Majeſties Prerogatives.

2. We muſt not conclude any thing unreaſonable, or unfit, becauſe there are ſome inconveniencies in it; for all humane Conſtitutions have their own defects. But I dare ſay, the Principles of my Adverſaries have more than mine; for Common-wealths are not only ſubject to err, becauſe they have their paſſions as well as Kings, but they are ſubject to more paſſions: for,

1. They who Govern in Common-wealths and *Ariſtocracies*, have Rivals whom they fear, and againſt whom, upon that account, they bear Revenge, which Kings want.

2. They are not ſo much concerned in thoſe they Govern as Kings; the one conſidering

conſidering the common Intereſt, as a Tenant does Lands of which he takes his preſent advantage, though he ſhould deſtroy it; the other caring for it, as a Proprietor does for his own Ground; the one Jading it, as a Man does a hired Horſe; the other uſing it as a Man does his own.

3. The People are ordinarily Governed by thoſe who are the worſt of men; for theſe ordinarily can flatter and cheat moſt, and can beſt uſe the Hypocrites Vizor: Whereas the beſt Men ordinarily are abſtemious, modeſt, and love a private Life, and were there ever ſuch Villains as thoſe Rebells who Governed us in the laſt Age? And can we deny but our pretenders to Liberty and Property in this Age are the Cheats of the Nation? Who, to be in Employment, hate ſuch as are in it, or are ſuch as are diſcontented for being put out of it, or are Bankrupts, who reſolve to make up their broken Fortunes by it.

4. Even good Men when they are raiſed to Govern, grow Inſolent, of which Princes are not capable, for they are ſtill the ſame, and their Paſſions do not riſe becauſe their fortunes do not.

5. Kings and Princes know they will be Charged with what they do; but the multi-

tude

tude knows, that the Publick in general, and not any one Man will be blamed: and ſo every private Man thinks himſelf ſecure, whilſt he ſhifts it over on another; or elſe leſſens it, by dividing it amongſt many.

6. The multitude are very ſubject to Factions, moſt Men ſcorning to obey their fellow Subjects; and when they are in Factions, who knows whom to obey; and thoſe Factions will again ſubdivide in new ones, and ſo *in infinitum*; and when either prevails, they ſpare none, becauſe their Oppoſites are Enemies: But Kings pity even Rebels, remembring that they are their own. And I dare ſay, that more were Murthered and Ruined in one year, of the laſt Reforming Age, than ſuffered by the great *Turk*, the *Mogol*, and the King of *France* in twenty years. And more ſeverity was exerciſed in one year by thoſe Reformers, than by all this Race of our Kings theſe 600 years.

7. If it be ſaid, That Kings have ill Miniſters, ſo have Common-wealths; and we obſerv'd in *Scotland*, that after we had taken from our King the Prerogative of chuſing Judges and Counſellors, our Parliament did the next year, chuſe the greateſt Block-heads, and Idiots in all the Nation, whom the Ring-

leaders

leaders advanced, to the end they might Govern all themſelves; to which Cheat, Kings cannot be liable, it being their Intereſt to have able Miniſters. And whereas Kings have no Intereſt to prefer one to another: yet in Popular Governments, every one endeavoures to prefer his own Relations.

8. In difficult Caſes, haſte and expedition requires, that one ſhould be truſted: and even the *Romans* behoved in great dangers, to imploy a Dictator, who was accountable to no man for any thing he did.

9. There can be no Secrecy in Popular Governments, as in Monarchy, and what many muſt know, all may.

10. Enemies may always get ſome in popular Governments to ſide with them, and upon ſpecious pretexts, to retard all good Deſigns; and when popular men are Debating for ſhadows, the occaſion ſlips away irrecoverably.

11. Either Common-wealths imploy no extraordinary perſons, being ever jealous: or if any man become ſuch by great Actions, or long Experience, he is preſently ruined. If we conſider the ſeverity of *Venice* againſt their Nobles, and their executing Men without citing or hearing them, and that upon meer jealouſies, we muſt confeſs with a wiſe

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Spaniard, who has collected the arbitrary courſes practis'd and allow'd in that State, that there is leſs liberty there, than under the worſt of Monarchies; nor was ever any people ſo miſerable as *Rome*, during their Republick, having been ruined in every age with Civil Wars, and having had no great man, who died not miſerably, after many falſe and popular Accuſations; nor find we amongſt the many *Grecian* Heroes in *Cornelius Nepos*, that two eſcap'd the peoples fury: and did not *De Wit* find little of that Juſtice which he magnified in Republicks?

But whatever may be ſaid againſt the inconveniences ariſing from the paſſions, humors, & inſolencies of the Populace in Commonwealths, yet much more may be ſaid againſt the allowing that Prerogative to them under a Monarchy; for that were to diſtract for ever the Government betwixt two contradictory Supream Powers, and make the People miſerable in not knowing whom to obey when they differ, and to make Government, which ſhould defend them againſt a Civil War, become the cauſe of it; for how can it be in reaſon expected, but (if the People know they can controll the King, that ambitious, and diſcontented Ringleaders,

ers, or ignorant and bigoted Multitudes, will be alwayes endeavouring to uſe this their Prerogative, ſince it ſeems alwayes glorious, and oft-times advantagious to oppoſe Kings; whereas on the other hand Kings cannot but be always jealous of, and fear popular Invaſions, and both theſe Powers, ſhall like Neighbouring Princes, be always endeavouring to gain advantages upon one another, and in theſe Conteſts ſhall be ſpent all the time and pains that ſhould be beſtowed in reſiſting the Common Enemy, which cannot but very much leſſen the Love which Princes ought to have for their People, and the Reſpect which People ought to have for their Prince; and how can it be imagined, but that in this caſe the People ſhall always groan under greater misfortunes than thoſe which we felt betwixt the *Bruce* and the *Baliol*, and thoſe which our Neighbours felt in the Conteſt between the Houſes of *Lancaſter* and *York*. All which cannot but appear very probable, as well as dreadful to thoſe who conſider the late Rebellion, wherein the People pretending that the King had violated their Liberties, they murder'd and pillag'd all ſuch as were not of their Opinion, and after they had ruin'd their Prince, the People divided and fought

fought one againſt another, the greater part pretending they ought to be obeyed, becauſe of their numbers, and the leſſer pretending that they were the ſounder part, and had the better Cauſe, and it is impoſſible in ſuch a caſe to find a Judge of Controverſies. Which is another unanſwerable Argument againſt the Peoples Supremacy, by which all they can gain is an endleſs Liberty of ruining one another without hope of Redreſs. Nor can Parliaments remedy this, for we have ſeen oppoſite Parliaments ſitting at the ſame time forfeiting one another, whilſt the aſtoniſhed multitude ſtood at a Gaze, not knowing whom to obey, and praying that God would Re-eſtabliſh our lawful Monarchy, with which, when it was Miraculouſly Reſtored, they were ſo overjoy'd as men are when they are freed from the Gallies, in which they had been treated as Slaves.

And whereas theſe Republicans pretend that the King is but a Phyſician, this ſhews that they deſign to have no King, for any man may lawfully change his Phyſician, and *Buchanan's* laying ſo much weight on this Argument, makes me ſuſpect much his honeſty, for no man can have ſo mean an opinion of his Senſe. And his comparing the Monarch to

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a Tutor, is very extravagant; for no man is ſworn to have ſuch a mans Heirs for Tutors: the one is choſen by God, the other by the Patient; the one has a right by Law that is unalterable, the others employment, is meerly precarious. But though he were a Tutor, no man can remove his Tutor at pleaſure, as they ſay the People may remove their King. Nor is a Tutor to be laid aſide, but by an Action before a Superior Judge, wherein he is to be proved to have Malverſed; and therefore ſince there is no Superior Judge except God, and that the People are not his Superiors, it clearly follows that the People cannot lay aſide their King: Only I joyn ſo far with *Buchannan* in thoſe Rhetorical expreſſions, that I really think the Multitude is always ſo mad, that they need a King to be their Phyſician, and of ſo weak a Judgment like Minors, that they need him for a Tutor, and without his aſſiſtance and protection every hypocritical Bigot, and ambitious Uſurper would cheat them at his pleaſure, and make them not only a prey, but but a Tool in their own Slavery

Nor is their any force in that Argument, The King was made for the People, and not the People for the King; and therefore the People are nobler than the King, and ought

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to be prefer'd to Him. For to this it is anſwered, that,

1. The Queſtion here is not, who is more preferable, but who is theSuperiour? And though one good Chriſtian be preferable to a thouſand, who are not ſo, yet his Intereſt in the Commonwealth is not preferable; the wiſer part is ſtill preferable to the greater part: and yet the greater will over-rule the wiſer. A Shepherd is ordained for the Flock; and yet it cannot be concluded, that a Flock of Brutes is to be preferred to any reaſonable Creature.

2. The Kings Intereſt and the Peoples are inſeparable in the Conſtruction of Law, which preſumes, That what the King does He does for the People, and there is none above the King, that can Judge Him, if He does otherwiſe.

3. Whether the Kings Power be derived from God, or from the People? yet if it be derived from God, it is preferable, becauſe of Gods Ordinance: Or if from the People, it is preferable, becauſe they, by Electing Him King, have conſented that it ſhould be ſo; and they having Truſted Him with the publick Intereſt, the publick Intereſt is ſtill preferable. I know that *Buchannan* and others, value themſelves much upon the In-

Inſtance of the *Bruce* and *Baliol*, in which the people did Declare, That they preferred the *Bruce*, becauſe the *Baliol* had enſlaved the Kingdom to the *Engliſh*. And it is generally urged, That all Lawyers are clear, that if a King alienate His Kingdom, His people may diſclaim Him. But my anſwers are, That if a King will alienate His Kingdom, the Subjects are free in that caſe (if at all) not by their power to re-aſſume their firſt Liberty; but becauſe the King will not continue King, and they are free by his Deed, but not by their own Right. 2. Even in that caſe, Lawyers do irritate and annul the Deed; but diſſolve not the Contraveeners Right. And as to that particular Inſtance, it is well known, that King *Robert* the Firſt, or the *Bruce*, as we call him, was deſirous that the Parliament ſhould threaten to chooſe another, if He ſubmitted his Intereſt to the Popes Deciſion, who pretended then to be the Supream Judge, over all Kings. But though the *Bruce*, to pleaſe the people, ſhould have ſhunned to quarrel with what they did in ſuch a Juncture; yet that could not wrong the Monarchy, nor His Succeſſors, as ſhall be proved.

Having

Having thus cleared, that the Kings power is not derived from the people, even though they had Elected Him, and that He is an abſolute King, both by our Laws, and the Nature of our Monarchy; and that all this is moſt conſiſtent with right Reaſon, I come now to draw ſome Concluſions from theſe Principles.

The firſt Concluſion ſhall be, That our Parliaments are not co-ordinate with our Kings, in the *Legiſlative* Power; but that the *Legiſlative* and *Architectonick* Power of making Laws (as Lawyers term it) does ſolely reſide in the King, the Eſtates of Parliament only conſenting, which will further appear by theſe Reaſons.

1. It cannot be denied, but we had Kings long ere we had Parliaments (we never having had any Parliaments till King *Kenneth* the Thirds Time, *Anno Dom.* 988. according to the Computation of the ſevereſt Re-publicans themſelves; for till then, we read only of the *Proceres Regni*, or the Nobility, or Chiefs of Clanes, and Heads of Families, who aſſembled upon all occaſions, to give the King advice) and therefore our Parliaments cannot pretend that they were deſigned as a Co-ordinate power

with the King, while he did what was right; much leſs to be his Judge, when he did what was wrong.

2. That our Kings made Laws of old without any conſent, and that theſe were ſubmitted to by the people, is clear, not only from our Hiſtories, which do tell us, that ſuch Kings made ſuch Laws, without ſpeaking any thing of either Nobility, People or Parliament, but even from our old Books of Statutes, wherein there is no mention made of the conſent of either the Nobility or Parliament: The Laws at that time beginning ſimply, *The Kings Statutes*, as in all the Statutes of King *William*, King *Alexander* the Second, and in the Statutes of King *Malcolm Canmore*: *King David* the Firſt, and *King David* the Second, where there is not ſo much as mention made of the Nobility, or the Parliament, in the very beginning of the Statutes, and that at other times the Nobility were only called, and that only the Nobility did ſit, is very clear from the Inſcriptions of thoſe Parliaments, ſuch as in the *Parliament of King Alexander* the Second, which bears, to have been made with the common conſent of the Nobility, *cum communi conſenſu Comitum ſuorum*, without ſpeaking of any other State,

State. Nor do I find a word of Burgeſſes, till the Parliament of *King Robert* the Third, in 1400. and even according to this late Conſtitution, it is undeniable that the Parliament have not even an equal power with the King, much leſs a power above him.

3. How can that Judicature have a Co-ordinate power with the King, when no man can ſit in it but by a priviledge from the King? but ſo it is, that all that are Members of Parliament, ſit there by a ſpecial priviledge from the King, and there is nothing conſidered to capacitate them to ſit, but the Force and Energy of that Priviledge, without reſpect, either to what Land they poſſeſs, or what number of People they repreſent. And thus the Nobility and Biſhops, ſit there, by vertue of the Kings Creation; and the King may Create a hundred Noblemen that morning that the Parliament is to ſit, though none of all the hundred have one foot of Land in *Scotland*; and though the Knights Barons muſt have ſome Land, elſe they cannot Repreſent any Shire; yet though a Gentleman had 5000. pounds *Sterling* a year, he could not ſit there, except he be the Kings immediate Vaſſal, and hold his Lands of His Majeſty

in capite: So that he ſits not by vertue of his Land, but as Capacitated by the King. And though thoſe who Repreſent the Burrows Royal are Commiſſionated by the people of their Burghs; yet the people who ſend them, are not conſidered in that Commiſſion, but the Power only which the King gives them to ſend: For though a Town had a hundred thouſand Inhabitants, and another only twenty Inhabitants: yet theſe hundred thouſand could not be Repreſented in Parliament, except the King had erected their Town into a Burgh Royal, From which I evince two things. 1. That the Parliament is the Kings Council, in which he may call any He pleaſes, and not as the peoples Repreſentatives only, ſince there are great multitudes in the Nation, Repreſented by none there: For though they Repreſent their Conſtituents in Parliament, yet the power of ſending Repreſentatives, is derived from the King Originally, and flows not from any proper Right inherent in thoſe whoſe Repreſentatives they are. 2. That Judicature cannot have a Co-ordinate power with the King, which he needs not call unleſs He pleaſes; and which he can diſſolve when He pleaſes: and in which, when they are aſ-

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ſembled, He has a Negative Voice, by which He can ſtop all their Propoſals and Deſigns; For, if they were Co-ordinate with the King, then *par in parem non habet imperium*; and it is againſt common Senſe to think that theſe two can be equal, ſince the Power of the one flows from the other: By which is likewiſe clear, that the great principle laid down by *Buchannan*, *viz.* That the King is *Singulis* Major, *Univerſis Minor*, greater than any one, but leſs than the collective Body of the Parliament taken together, is abſolutely falſe; becauſe he has a Negative Voice over that collective Body, and as they cannot Meet without him, ſo he can diſſolve them when he pleaſes, and I confeſs it ſeems to me unintelligible how they can be greater than the King, by vertue of a power which they derive from the King.

4. The Parliament is called the Kings Council, as is clear from the Inſcriptions of all our old Parliaments.

Thus the Statutes of *Alexander* the Second begin, *Alexander, By the Grace of God, King of* Scots, *did by the Common Council of his Earls Decree*, &c.

The Statutes of King *Robert* the Firſt, bear, *to be by the Common Council of his Prelates*, &c.

The firſt Statute of King *Robert* the Second, bears, *that none who is elected to be of the Kings Council, ſhall bring another to it who is not elected.*

The 8. and 13. Parliaments of King *James* the Firſt, and the 2. 3, 4. and 7. of King *James* the Second, bear for inſcriptions, *The Parliament or general Council of ſuch Kings.* And the firſt Act of that 8. Parliament of King *James* the firſt, Bears, *Quo Die Dominus Rex deliberatione & conſenſu totius Concilii*, &c. And it is againſt Senſe, to think that any mans Counſel can have Authority over him, for, as we ſay, Counſel is no Command.

5. The Parliament was but the Kings Baron Court, as is very clear to any man who will read the old Regiſters of Parliament, in which he will ſee that the Parliament was aſſembled, and the Suits were called, and Abſents Outlawed as in other Baron Courts, whereof many publick Records are extant, and I ſhall only ſet down that of the 8. Parliament *Ja.* 1. The words of which Inſcription are, *In the eighth Parliament, or General Council of the Illuſtrious Prince* James, *by the Grace of God, King of* Scotland, *holden at* Perth, *and begun, ratified and approved by the three States of the*

the Kingdom, as ſufficiently and rightly ſummoned, the twelfth day of July, *in the year of our Lord, one thouſand four hundred and twenty eight, continued from Time to Time; the Biſhops, Abbots, Priors, Earls, Barons, and all Free-holders, which hold in Chief of our ſaid Lord the King; and certain Burgeſſes of every Burrow of the Kingdom being ſummoned and called in due and wonted manner; all thoſe aſſembling that ought, would and might be concerned; but ſome were abſent, ſome of which were lawfully excuſed, others abſenting themſelves through Obſtinacy, whoſe Names appear in the Rolls of the Suits, were every one of them amerc'd ten pounds for his Contumacy.* And that the King was Judge what Barons ſhould come to the Parliament, is moſt clear by the 75. *Act Par.* 14. *Ja.* 2. whereby it is declared, *No Free-holder under the ſum of twenty pounds ſhall come, except he be ſpecially called by the King, either by his Officer, or by Writ*; and though afterwards the King allowed two Barons of every Shire, to be ſent to repreſent all the Barons for ſaving Expences, yet even after that Conceſſion, it is declared by the 78. *Act Par.* 6. *Ja.* 4. *That no Free-holder be compelled to come, except our Soveraign Lord writ ſpecially for them.*

It

It being thus clear, that the Parliament is the Kings Baron Court, it ſeems a wonder to me how it could have entered into the heart of any ſober man to think that any mans Baron Court, and much leſs the Kings Baron Court, ſhould have power and juriſdiction over him, and that it ſhould be lawful to them, as *Buchannan* and theſe other Authors aſſert to puniſh him, or lay him aſide, all which Aſſertions are equally impious and illegal.

6. When the King reſolves to leſſen any way his own Power, this is not done by the Authority of the three Eſtates, as certainly it would be, if they had the power to leſſen his Authority, but the King does the ſame from his own proper Motive, as when the King binds up his own Hands form granting Remiſſions in caſes of forethought Fellony, *Ja.* 4. *Par.* 6. *Act* 63. And when an Act was to be made, forbiding the Lords of the Seſſion to admit of private Writings from the King to ſtop the procedure of Juſtice, this is not Enacted by the three Eſtates, but only by the King, and is founded upon the Kings own promiſe, *Act* 92. *Par.* 6. *Ja.* 6. And in all Acts of Parliament the King only Statutes as Legiſlator, and the Parliament only

only Adviſe and Conſent, which ſhews that they are not Co-ordinate with the King, as is aſſerted by *Buchannan* and others, much leſs above him. And the Acts of Parliament in the late Rebellion having run thus, *Our Soveraign Lord, and the three Eſtates*; contrary to the Tenor of all the Laws that ever were made in *Scotland*. The Parliament returning to their duty, ordained that Style to be altered, and to bear as formerly, *Our Soveraign Lord, with Advice and Conſent*, &c.

But laſtly, what advantage can the people have by placing their ſecurity in the Parliament, ſince they are ſo liable to Paſſions, Errors, and Extravagancies, as well as Kings are, and have, if *Buchannan* be believed, betrayed the intereſt of the Kingdom, ſince King *Kenneth* the Seconds time, now above 700. years; and they are ordinarily led by ſome pragmatical Ring-leaders, who have not that kindneſs or intereſt to preſerve the Kingdom that Kings have: and ſince the King may make ſo many Noble-men and Burghs Royal at pleaſure, by whoſe Votes he may ſtill prevail, what ſecurity can we have by giving them a power above the King, or how can they have it?

From

From all which it may clearly appear, that we have had Kings long ere we had Parliaments, and that the Parliaments derive their power from the King; and that at firſt our King only called the Heads of Families, and his own Officers, as his Council, with whom he conſulted, without any neceſſity to call any others than he pleaſed, there being no Law, Article, nor Capitulation obliging him from the beginning thereunto: And our Kings were ſo far from having Parliaments aſſociated with them in their Empire, that there is no mention at all of them, or of any condition relating to them in the firſt Inſtitution of our Kings above related; nor were there any Parliaments in being at that time. But after the Feudal Law came to be in vigor, then our Kings looking upon the whole Kingdom as their own in property, King *Malcolme Canmore* did diſtribute all the Land of *Scotland* amongſt his Subjects, as his Liege-men, which is clear by the firſt Chapter of his Laws; and according to the Feudal Law, all the Vaſſals of our Kings compeared in their Head-Court, and therein conſulted what was fit for the Kingdom; but thereafter the way of making War, requiring Money, and Property belonging to the Subject, as Government

ment did to the King, it was neceſſary to have their conſent for raiſing Money: And from this did ariſe the inſerting the advice and conſent of the three Eſtates in our Acts of Parliament.

From this alſo it is very clear that their opinion is very unſolid and ill founded, who think that Kings can do nothing without a ſpecial Act of Parliament, even in matters of Government. As for inſtance, that he cannot reſtrain the Licence of the Preſs, or require his Subjects to take an Engagement for ſecuring the Peace; for, theſe and the like being things which relate immediately to Government, the King has as much right to regulate theſe, as we have to regulate and diſpoſe of our Property, Government being the Kings Property.

2. Though the Monarchy had been derived from the People, yet as ſoon as our Kings got the Monarchy, they got ever thing that was neceſſary for the Aminiſtration of it, which as it is common ſenſe and reaſon, ſo it is founded upon that moſt wiſe and juſt Maxime in Law, *Quando aliquid conceditur, omnia Conceſſa videntur, ſine quibus conceſſum explicari nequit.*

3. I deſire to know where there is yet a Law giving the King a Negative voice, a Power

power of Erecting Incorporations, or a power to grant Remiſſions for Crimes, or Protections for Civil Debts, and yet the people is far more concerned in theſe; and the King's having power to do theſe, and a thouſand other things, doth rather oblige and warrant me to lay down a general Rule, that the Kings of *Scotland* can do every thing that relates to Government, and is neceſſary for the adminiſtration thereof, though there be no ſpecial Law or Act of Parliament for it, if the ſame be not contrary to the Law of God, Nature or Nations.

The ſecond Concluſion that we draw from theſe former Principles, is that Princes cannot be puniſhed by their own Subjects, as *Buchannan* and our Republicans do aſſert, which is moſt clear by the former Laws, wherein it is declared, That *the King is a Soveraign and abſolute Prince, and deriving his power from God Almighty, that it is Treaſon to endeavour to depoſe, or ſuſpend the King.* Wherein our Law is founded on the nature of Monarchy; for if he be Supream, He cannot be judg'd; for no man is judg'd but by his Superior, and that which is Supream can have no Superior: and on the

the Principles of the Law of Nature and Nations, becauſe ſaith the Law, No man can be both the Perſon who Judgeth, and the Perſon Judg'd; and it is ſtill the King who Judgeth, ſince all other Judges do repreſent him, and derive their power from him, *Ipſe ſe prætor cogere non poteſt, quia triplici officio fungi nequit ſuſpectum dicentis, & coacti, & cogentis L. Ille a quo ff. ad Trebell.* It is a prnciple in all Law, that Jurisdiction and all other Mandats ceaſe with the power that granted it, and therefore as they acknowledge that a King cannot be cited till he have forfeited His juſt Right, ſo as ſoon as he has forfeited it, all the power of the ordinary Judges in the Nation falls, and becomes extinct, and no other Judge can Judge Him, becauſe no other Judge can ſit by vertue of any other Authority, till it be known that he has forfeited his, and that cannot be till the event of the Proceſs; and if the People be Judges, yet they cannot aſſume the Government till the King has forfeited it: And why alſo ſhould they be Judges, who have neither knowledge nor moderation, who are acted by humor, and delight in inſolence? and how ſhall they meet? Or who ſhall call them? Nor can the Parliament Judge them, becauſe they derive their

their Right from the King, as ſhall be prov'd: And though they were equal, yet no equal can Judge another, *par in parem non habet Imperium, nemo ſibi Imperare poteſt.* No man can command himſelf, *l. ſi de re ſua ff. de recept. Arbitr. Nemo ſibi legem imponere. poteſt. l. quid autem ff. de denat. inter. virum & uxorem*, and therefore the Civil Law which is ours by Adoption, does poſitively aſſert, That *Princeps legibus ſolutus eſt*, the King is liable to no Law, *l. princeps, ff. de legibus:* For though He be lyable to the Directive Force of the Law, that is to ſay, He ought to be Governed by it as his Director: Yet He is not lyable to the Coercive Force of the Law, as all Lawyers that are indifferent do aſſert, *Harmenpol. l.* 1. *tit.* 1. *Sect.* 48. ὁ βασιλεὺς νόμοις οὐκ ὑπόκειται, καθ' ὧν ἁμαρτήσας οὐ κολάζεται. The King is not Subject to the Law, becauſe offending againſt it, he is not puniſht, *vid. Granſwinkell. cap.* 6. *Armiſ. cap. Franciſc. a victoria Relect.* 3. *num.* 4. *Ziegler. de jur. Majeſ. cap.* 1. *num.* 12. with whom the Fathers alſo agree, *Ambroſ. in Apol. David cap.* 4. *Liberi ſunt Reges a vinculis delictorum, neque enim ullis ad pœnam vocantur legibus, tuti Imperii poteſtate Iſiodorus* 3. *ſent. cap* 31. *populi peccantes Judicem metuunt, Reges autem*

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ſolo Dei timore ; metuq; gehennæ coercentur : and in this Senſe, they take theſe words, *Pſal.* 51. ——— *Againſt thee, thee only have I ſinned* ; and I was glad to find in Biſhop *Uſhers Power of Princes*, amongſt many other Citations, *That the Rabbies, and particularly Rabbi* Jeremiah *own'd, that no Creature may Judge the* King, *but the Holy and Bleſſed God alone, in which alſo Heathens agree with Jews and Chriſtians*, *Ecphantas* the Pythagorean makes it the Priviledge of God, and then of the King, to be Judg'd by none, *Stobeus* Sermon 46. and *Dion* in *Marco Aurelio* tells us, That it is certain, free Monarchs cannot be Judg'd, ſave by God alone, and if it were otherwiſe, we ſhould ſee them very unſecure, for the ambition and avarice of inſolent Subjects ſhould never or ſeldom miſs to form their Proceſs, and why ſhould Parties be Judges? But to demonſtrate the Juſtice which Kings and Princes are to expect from the Populace and Mobile, let us remember their Material Juſtice, in the uſage of ovr Saviour, when they cryed, *Crucifie him, Crucifie him* ; their Sentence againſt King *CHARLES* the *Martyr*, when they were at the height of their pretenſions to Piety, and a publick Spirit ; their uſage of *De Witt*, the Idolizer of them, and

their Commonwealth : and if we want a true *Idea* of their Form of Proceſs, we will find it in their uſage of the Archbiſhop of *St. Andrews* and others, no Enditement, no Citation, no Defences, no Sentences, no time to prepare to die : and yet all this are the Dictates of pure and devout publick Spirits. *Buchannan's* Bloody Arguments for this poſition are, That Tyrants have been Murthered with Applauſe, and Princes would become licentious, if they were not Reſtrained, by the juſt fear of being called to an account : That the *Roman* and *Venetian* Magiſtrates have been puniſh'd by the people, and that the ordinary Judges of the place have Judg'd them : and that ſome of our Kings, as well as thoſe of other Nations, have been puniſh'd as Tyrants.

To which I anſwer ſhortly, that Inconveniencies muſt not prevail with us to break our Oaths, and overturn our Laws, for nothing has ſo great inconveniency in it as this has, theſe being but partial and this a total Inconveniency. And the *Engliſh* Lawyers agree, that a miſchief is better than an Inconveniency, and this ſhould have been conſidered, before we ſwore to Monarchy : and if the People were Electors, as, they never were ; yet they ſhould have

reſerv'd

reſerv'd thisPower, or elſe they cannot now challenge it. But though our Law were not clear, at it is moſt uncontroverted upon this point: Yet right Reaſon ſhould perſwade us to have reſerv'd no ſuch Power: For as Kings may err, ſo may the Judges who are to Try them: and it is more probable their Tryers will, becauſe they may be acted by Revenge, Ambition, or Popularity; and there is nothing ſo lyable to err as the Populace.

The *Romans* and *Venetians* might have puniſh'd their Magiſtrates, becauſe theſe Magiſtrates were not Veſted with a Supream Power; nor were they Soveraigns as our Monarchs are. And thoſe Judges who Try'd them, deriv'd not their Power from thoſe Magiſtrates whom they Try'd, as our Judges do; for the ſame conſent, and compact by which they were made the Chief, the others were made alſo Magiſtrates, which cannot be ſaid of Abſolute Monarchs, who derive not their Power from the People as theſe do, and the Inſtances of Kings who have been Murther'd, are Crimes in them, who did commit them, and ſo ſhould not be Rules to us and many of the beſt of Kings have been worſt us'd. But who can eſcape by innocence when King *CHARLES* the

Martyr fell by Malice? Such alſo as cry up the Murtherers of Tyrants, who had no juſt Right, never meant to allow the Arraignment of lawful Monarchs, who, when they err, have God only for their Judge; and if they fear not Him, and eternal Puniſhment, they will not probably fear mortal Men, and their own Subjects whom they can many ways eſcape.

2. There is no Creature ſo unreaſonable, but he will uſe his own with diſcretion, though there be no Law obliging him to it, nor Puniſhment to be inflicted, if he do otherways: who burns his own Houſe, or drowns his Lands, though he may do it? For the Law conſiders, that a King is either mad, and if ſo, he will reſpect no Law, and ſhould not be puniſht, at leaſt he will not ſtand in awe for fear of it, or elſe he is of a ſound Judgment, and then he needs no Law; and therefore, Why ſhould we apprehend that a King will deſtroy His own Kingdom?

3. A King is alſo obliged by His Fame, to do things worthy of His high Truſt, and things able to abide that conſpicuous light to which he is expoſed.

4. Though his People ought not to rebel, yet no thinking man can be ſure that they will

will not. And therefore even the greateſt Tyrants fear ſuch Accidents, though they know they are not bound by thoſe Laws, that tye Subjects. And if all theſe fail, yet we muſt reverence God's Diſpenſations, and expect a redreſs of theſe unuſual Emergencies from his Divine Goodneſs, for whoſe ſake we ſuffer them; rather then expoſe all to ruine, by endeavouring a revenge, that may be ſo unjuſt, in the preparative, and dangerous in the event.

Dolemun does here urge, that although the People have conferred upon the King, the Power and Juriſdiction which naturally reſided in them, yet they have not ſo delegated that Power, as to deveſt themſelves of all Juriſdiction privatively, ſo that they ſtill retain a cumulative Juriſdiction, by which, in caſe of neceſſity, they may judge the King, and all other Delinquents. To which my Anſwers are. 1. It is fully proved, that the King derives not his Power from the People, and ſo they connot retain that Power which they never had. 2. A Cumulative Juriſdiction, is only granted to thoſe who cannot deveſt themſelves of the Power they give, becauſe Supream Power is eſſential to their Character, and therefore, though a King retain a Cumulative

juriſdiction, when he delegates his Power to a Subject, it cannot at all be inferred, that therefore the People retains the ſame, when they transfer, all their Power upon the King; for the one deſigns to make a King, who is to be Supream; and the other deſigns to gratifie a Perſon, who is to remain ſtill a Subject. *Populus jus omne in* Cæſarem *transfert, & qui totum dicit nihil excipit.* The People may be a People without a Cumulative Power, or without being Supream, but a King cannot; and I admire, why *Doleman*, who compares always the King to the Huſband, and the Common-wealth to the Wife; the King to the Head, and the Common-wealth to the Body, can think, that it is Lawful for the People to judge and puniſh their King, ſince it is not lawful for the Wife to judge her Husband, or for the Body to cut off the Head.

The 3. Concluſion which I ſhall draw from the former Principles, ſhall be, That as it is not lawful for Subjects to puniſh their Kings, ſo neither is it to riſe in Arms againſt them, upon what pretext ſoever, no not to defend their Liberty nor Religion. Which Concluſion alſo I ſhall endeavour to Eſtabliſh on ſure foundations of Poſitive Law. Reaſon, Experience, and Scripture.

As

As to our Poſitive Law, it is clear, for by the 3. *Act Par.* 1. *Ja.* 1. "It is declared "Rebellion to riſe in Arms againſt the Kings "Perſon: And by the 14. *Act* 6. *Par.* King "*Ja.* 2. It is Treaſon to Rebel againſt the "Kings Perſon or Authority: By the 25. "*Act Par.* 6. *Ja.* 2. It is Treaſon to riſe in "fear of War againſt the Kings Perſon or "his Majeſty, or to lay hands upon his "Perſon violently, whatever age they be of, "or to help or ſupply thoſe who commit "Treaſon. By the 131. *Act* 8. *Par. Ja.* 6. "All the Subjects are forbid to Convocate "for holding of Councils or other Aſſem-"blies without his Majeſties expreſs War-"rant; and by the 12. *Act* 10. *Par.* King "*Ja.* 6. The entring into Leagues or Bonds "without his Majeſties ſpecial Command is "declared to be Sedition. Moſt of which Acts are prior to *Buchannans* time, and conſequently he was very inexcuſable in advancing this Rebellious Principle. And theſe Laws having excepted no caſe, exclude all caſes and pretexts of riſing in Arms againſt the Lawful Monarch; but our unhappy Country-men having by a long and open Rebellion, oppoſed the moſt devout, and moſt juſt of all Kings, upon the falſe pretence of Liberty, and Religion, the Parlia-

ment of this Kingdom, from a full Conviction of the Villainies of thoſe times, and to prevent ſuch dangerous Cheats for the future, they did by the 5. *Act*, *Par.* 1. *Char.* 2. declare it to be Treaſon for any number of his Majeſties Subjects to riſe in Arms upon any pretence whatſoever, and to ſhew that all ſuch Gloſſes as were us'd by *Buchannan* were abſurd, and did not make void the firſt Laws, though general, the Parliament did by the 4. Act of that 1. Parliament declare that any Explanation or Gloſs, that during the late Troubles hath been put upon theſe Acts, as that they are not to be extended againſt any Leagues, Councils, Conventions, Aſſemblies, or Meetings, made, holden, or kept by the Subjects, for Preſervation of the Kings Majeſty, the Religion, Laws, and Liberties of the Kingdom, or for the publick Good either of Church or Kingdom, are falſe and Diſloyal, and contrary to the true and genuine meaning of theſe Acts. Which Statute is a clear deciſion againſt *Buchannan*, finding that the Statutes that were prior to his time, and all other ſuch general Statutes made in favours of the King, did formerly ſtrike againſt his Principles and Diſtinctions. As alſo to preclude all avenues to Rebellion by teaching,

ing, defending, or encouraging others to Rebel upon theſe pretexts, as the former Act declared, that actual riſing in Arms was Rebellion. So by the 2. *Act Seſſ.* 2. *Par.* 2. *Charles* 2. It is declared Treaſon for any Subject to maintain theſe Poſitions, *viz. That it is Lawful for Subjects upon Pretence of Reformation or any other Pretence whatſoever to enter into Leagues, or Covenants, or to take up Arms againſt the King, or any Commiſſionated by him.*

2. All the Arguments formerly produc'd againſt the power of the Subject to puniſh His Perſon, do fully prove likewiſe that they have no power to riſe in Arms againſt him. For either the collective Body of the Subjects are ſuperiour to him, and if ſo, they may not only riſe up in Arms againſt him, but they may puniſh him; but if the King be ſuperiour to them, as has been formerly prov'd, then it cannot be lawful for Subjects to riſe up in Arms againſt him, no more than it is to puniſh his Perſon. Nor can I ſee how all ſuch as declare for a Defenſive War, are not to be concluded guilty of deſigning to murther the King; for if the King come in Perſon to defend His own Right, as certainly he will, and muſt; Can it be thought they will ſhoot at none,

leſt

leſt they kill him? and if they ſhoot, how can they ſecure His Sacred Perſon? and if they kill him in the Field, are they leſs guilty of his murther, than thoſe Ruffians who lately deſign'd it? Or doth it leſſen the Guilt that theſe deſign'd to kill him alone privately? whereas our moderate men will in face of the Sun, and with diſplay'd Banners againſt God and him, kill with him all ſuch, as being perſwaded that they are obliged before God to aſſiſt him, expoſe their lives for their Duty.

3. That dangerous, though ſpecious Principle of defenſive Arms, is inconſiſtent with that order of Nature which God has eſtabliſhed, and which is abſolutely neceſſary amongſt all other humane Relations; and by the ſame Analogy, by which we allow Subjects to riſe againſt their Prince, we may much more allow Children to riſe againſt their Parents, Servants againſt their Maſters, Souldiers againſt their Officers, and the Rabble againſt their Magiſtrates: for the King does eminently comprehend all theſe relations in his Soveraignty, as inferiour Branches of that Paramount, Monarchial power. And what a glorious ſtate ſhould Mankind be left in, if Anarchy were thus Eſtabliſhed, and every man ſhould be inveſted with

with power to be his own Judge? Or dares any reasonable man assert, that this is fit to be allowed in the present condition of Mankind; for since the generality of men can scarce be contained in their Duty by the severest Laws that can be made, what can be expected from them, when they are loosed from all Law, and are encouraged to transgress against it?

If the Multitude could prove that they were Infallible, and that no Oppression could be expected from them, something might be said, why we might ballance them with Authority. But since both Reason and doleful Experience, teach us, that generally the Multitude consists of Knaves and Fools, who alter not to the better by Conspiring together, nor become juster, for being led by such ambitious, and discontented Spirits, as ordinarily lead on Rebellions, it is safer to obey those of the two fallible Governours, whom God hath set over us, and whom the Law ties us to obey, and to whom also we are bound by the Oath of Allegiance; especially seeing thus we may probably expect, that they will be more careful of us, as being their own, than meer Strangers, who use us only for their own Ends. And at the worst in the

King,

King, we can have but an ill Maſter; whereas in allowing Subjects to uſurp, we may fight to get our ſelves hundreds of Tyrants, and theſe too fighting one againſt another, ſo that we ſhall not even know which of theſe Divils to obey.

4. This Poſition is againſt the very Nature, not only of Monarchy, but of all Governments; For who will obey when they may reſiſt? And who can be Judges whether the pretences upon which Arms are taken, be lawful, or not? And therefore ſince it is unlawful for Subjects to take up even Defenſive Arms, until it be found that the King againſt whom theſe Defenſive Arms are taken up, be a Tyrant, and an Oppreſſor: It clearly follows, that theſe Subjects muſt firſt have a Power to judge, and find that the King has erred, which is to declare the People to be Judges of their King; and we may be ſoon convinced that this Principle is againſt the Nature of all Government, if we conſider that if it were lawful for Subjects with us to riſe againſt the King, it ſhould be lawful for thoſe in a Commonwealth, or *Ariſtocracie*, to riſe againſt their Governors, ſince theſe may err as well as Kings do; and if this were allowed, all Nations ſhould always have one Rebellion ri-

ſing

ſing out of the Aſhes of another, for only they who prevail'd ſhould be ſatisfied, and all the reſt would certainly conclude that they might more juſtly oppoſe theſe Uſurpers, one or more, then the firſt did their lawful Prince; and thus Government which is deſign'd for the ſecurity of the State, ſhould run in a Circle fixt upon no certain Baſis, and determined by no ſure Meaſures.

5. This Principle is dangerous for the Subjects, as well as for the King and other Governors; for if Kings be perſwaded that Subjects think this Oppoſition lawful, then they will be ſtill jealous of them, and will be neceſſitated on all occaſions to ſecure againſt ſuch Oppoſitions, and ſo this Doctrine tends more to make our King a Tyrant, than to make us free. And if the difference betwixt King and People, ſhould draw both to Arms, where can we find a Judge, to whom both Parties will ſubmit? So that to allow this power in the People to debate, is to allow a difference that can never end; and in that caſe, what innocent man ſhall be able to know whom he may ſecurely follow? And the beſt Iſſue that could be expected from theſe debates, would be, that the one half of the Nation ſhould ruin the other: So comfor-

comfortable and juſt is this Rebellious Doctrine.

6. If we conſult either our own Experience, or Hiſtory, we will find that theſe Pretences of Liberty, and Religion, have always been uſed by thoſe who loved neither, and that they have been ordinarily uſed againſt the beſt of Kings, and ſo prove to be meer Cheats upon their parts who uſe them, and abſolute Villainies, if we conſider againſt whom they are uſed; and it cannot be otherways, for the worſt of men are always readieſt to take Arms, and the beſt of Kings are moſt inclined to ſuffer inſolence to grow up by degrees to Rebellion: And as few or none ever took up Arms againſt their King, in whom even the dulleſt did not ſee other motives than a love to Liberty and Religion, ſo when they who did take up Arms upon theſe pretences, did ſucceed in their attempts, they became themſelves greater grievances to the people, than thoſe lawful Powers againſt whom they pretended to protect them: And when others roſe againſt them upon the ſame pretence, they did in the ſevereſt manner declare that to be Rebellion in others, which they contended to be lawful in themſelves.

7. So dangerous is this Principle, that it

it has been always us'd as a Tool to promote contrary deſigns, and to ſerve the worſt of men in all the oppoſite ſides. And thus we ſee that the Bigot Papiſts have by it overturn'd Thrones, diſinherited and murdered Kings. In which the moſt impious of their Doctors have been admir'd and followed by the rigid Phanaticks, who did notwithſtanding teach, that all Papiſts were to be extirpated, and unquiet Spirits in the eſtabliſh'd Republicks of *Rome*, *Venice*, and *Florence*, have by this Principle endeavour'd to overturn and diſquiet as much their own Commonwealths, as our Republicans have impiouſly endeavour'd to deſtroy Juſt Monarchy, thereby to ſettle an uſurping Commonwealth.

8. The only pretext that can juſtifie the riſing up in Arms, being, that it is lawful to all Creatures to defend themſelves; the pretence muſt be dangerous, ſince its limits are uncertain: For how can Defenſive Arms be diſtinguiſhed from Offenſive Arms? Or whoever begun at the one, who did not proceed to the other? Or, what Subject did ever think himſelf ſecure after he had drawn his Sword againſt his King, without endeavouring to cut off by it that King againſt whom he had drawn it? the hope of Abſolute Pow-

Power is too sweet, and the fear of punishment too great, to be bounded, and match'd by the best of Men: And how could we expect this moderation from those who at first wanted patience to bear the lawful Yoke of Government, but because examples convince as much as reason, let us remember how when this Nation was very happy in the Year, 1638. under the Government of a most Pious and Just Prince, born in our own Kingdom, we rais'd an Army, and with it Invaded His Kingdom of *England* upon the pretence that He was Govern'd by wicked Counsellors, and design'd to introduce Popery; and this was justified as a Defensive War, by a long tract of General Assemblies, and Parliaments: and if this be a Defensive War that is justifiable, what King can be secure? Or, wherein shall we seek security against Civil Wars? Or what can be more ridiculous than to pretend the invading Kingdoms, murthering such as are Commissionated by the King, after that Invasion, entring into Leagues and Covenants against him, both at home and abroad, the robbing him of his Navies and Militia, and denying him the power to chuse his own Counsellors and Judges, are meerly Defensive: but God Almighty, to teach us how dangerous

these

theſe Defenſive Arms are, and how impoſſible it is to regulate Lawleſs violence, how gentle and eaſie ſoever the firſt beginnings are, ſuffered our War, which was ſo much juſtified for being meerly Defenſive, to end in the abſolute overthrow of the Monarchy, and the taking away the life of the beſt of Kings; and it is very remarkable, that ſuch as have begun with the Doctrine of giving only Paſſive Obedience in all things, as in refuſing to pay juſt Taxes, to concur in ſecuring Rebels, *&c.* have from that ſtept up to defenſive Arms, and from that to the power of Reforming by the Sword, and from that to the power of Dethroning and Murthering Kings by Parliaments, and Judicatures, and from that to the Murthering and Aſſaſſinating all who differ'd from them, without any other pretence or formality whatſoever, ſo hard a thing it is to ſtop when we begin once to fall from our Duty: And ſo eaſie a thing it is to perſwade ſuch as have allowed themſelves the firſt degrees of guilt, to proceed to the higheſt extravagancies of Villanie.

Oh! What a blindneſs there is in Error? And how palpably doth God deſert them, who deſert their Duty; ſuffering them after they have done what they ſhould have abhorred

horred, to proceed to do what they firſt abhorred really? To theſe I muſt recommend the Hiſtory of *Hazael*, who, when the Prophet foretold him, 2 *King.* 8. 12, 13. That he ſhould *ſlay their young men with the ſword, daſh their Children, and rip up their Women with child*, anſwered him, *am I a dog, that I ſhould do ſuch things?* and yet he really did what he had ſo excerated.

The moderation likewiſe of theſe modeſt pretenders to Self-defence, and Defenſive Arms, will appear, by the bloody Doctrine of their great *Rabbies*. *Buchannan* not only allows but invites Subjects to murder their King. And *Lex Rex*, *Pag.* 313. tells us, That it is a ſin againſt Gods Command to be Paſſively Subject to an unjuſt Sentence, and that it is an Act of Grace and Virtue to reſiſt the Magiſtrate violently, when he does him wrong: and after that horrid Civil War was ended, the Author of *Nahptali* doth juſtifie it, *pag.* 16, and 17, in theſe "words, Combinations for aſſiſtance in vi- "olent oppoſition of the Magiſtrates, when "the ends of Government are preverted "(*which muſt be referr'd to the diſcretion "of them who mind Inſurrection*) are ne- "ceſſary by the Law of Nature, of Cha- "rity, and in order to Gods Glory, and

"for

" for violation of this Duty of deliver-
" ing the oppreſſed from Magiſtrates, Judg-
" ment comes upon People. From which he proceeds, *Pag.* 18, and 19. do aſſert that, " not only the power of ſelf-defence, " but vindicative, and reforming power is " in any part of the People, againſt the whole, " and againſt all Magiſtrates, and if they uſe " it not, Judgment comes on (ſuppoſing " their capacity probable to bear them forth) " and they ſhall be puniſh'd for their con-
" nivance, and not acting in way of vin-
" dication of Crimes, and reforming Abuſes.

Before I enter upon thoſe Arguments, which the Scripture furniſhes us with, againſt theſe Rebellious Principles; I muſt crave leave to ſay,

1. That Defenſive Arms ſeem to me very clearly inconſiſtent with that Mortification, Submiſſion, and Patience, which is recommended by our Bleſſed Saviour, in all the ſtrain of the new Teſtament; and how will theſe People give their Coat to a Stranger, or hold up their other Cheek to him, when they will riſe even in Rebellion againſt their Native Prince.

2. As the taking up of Arms is inconſiſtent with the temper requir'd in a Chriſtian; ſo it ſeems a very unſuitable mean for

effectuating the end, for which it is deſign'd, ſince Religion being a Conviction of what we owe to God, how can that be comanded, which ſhould be perſwaded? and how can Arms become Arguments? Or how can External Force influence immaterial Subſtances, ſuch as are the Souls of Men. And we may as well think to awake a mans Conſcience by Drums, or to perſwade his Judgment by Muſquets; and therefore the Apoſtle ſpeaks only of ſpiritual Arms in this our Warfare, *The Sword of the Spirit, and the Helmet of Salvation, &c.* But, good God, how could the extravagancy of forcing the Magiſtrate by Arms, in Defence of Religion, enter into Mens heads? When it is unlawful even for the Magiſtrate himſelf, to force Religion by Arms. And as Subjects ſhould not be by the King forced to Religion; ſo if they uſe Force againſt the King, the pretext of Religion, tho ſpecious, ſhould not defend them. And therefore when *the ſons of Zebedee deſired fire from Heaven,* upon thoſe who oppos'd even our Saviour he told them, that they *knew not what Spirit they were of.*

3. It ſeems very derogatory to the power of Almighty God, that he ſhould need humane aſſiſtance, and it is a leſſening of the great

great eſteem that we ought to have for the energy, force and reaſonableneſs of the Chriſtian Religion, that it needs to be forc'd upon men by Arms, as if it were not able to force its own way. This Mahomet needed for his Cheats, but our Bleſſed Saviour needs not for his Divine Precepts, and therefore when *Peter* offered to fight for him, our Saviour checkt him, commanding him to put up his Sword, and to perſwade him the more effectually, aſſures him, That *all they who take the Sword, ſhall periſh by it*, and that his *Kingdom was not of this World*, and ſo he needed no ſuch worldly help, but if he pleas'd to call for Legions of Angels, his Omnipotent Father would ſend them, and ſure Angels are fitter and abler Inſtruments to carry on ſuch a work of Reformation, than Rebellious Regiments of Horſe and Dragoons.

4. Our bleſſed Saviour foreſeeing that Mans Corruption would in ſpite of Chriſtianity, prompt him to reſiſt; he therefore did command by the Apoſtle *Paul*, Rom. 13. *v.* 1. and 2. *Let every Soul be Subject to the higher Power, for there is no Power but of God, the Powers that be are ordained of God, whoſoever therefore reſiſteth the Power, reſiſteth the ordinance of God: and they that reſiſt*

ſhall receive to themſelves damnation. In which Text, it is very remarkable, that the Apoſtle urges this Chriſtian duty of ſubmiſſion, as being a mark of mans immediate dependence upon God, and as that, which when contemned, brings eternal damnation. And whereas it is pretended that this Text commands only ſubmiſſion to Magiſtrates, whilſt they Act Piouſly, and Vertuouſly, becauſe only in ſo far they are Gods Vicegerents, but forbids not reſiſtance to their impious commands. It is anſwered, that the Text has no ſuch limitation, and we muſt have ſo much reſpect to the Scripture, as to think that if God Almighty had deſign'd to allow ſuch an oppoſition, he would have warranted it, in as clear Terms, as he commanded the ſubmiſſion; and the reaſon why this ſubmiſſion is commanded, is not becauſe the Power is rightly us'd, but becauſe the Power is ordained of God. And we ſee that St. *Paul* himſelf did think that the power ſhould be reverenc'd, even when abus'd: for when the High Prieſt was Injuring him, he acknowledged that he was obliged not to ſpeak evil of the Rulers of his People, *Acts* 23. 2. And if this place of Scripture, and the ſubmiſſion therein commanded, were ſo to be limited, we behoved

likewiſe ſo to limit the fifth Commandment, and not to honour our Parents, except when they are Pious, nor to obey them, if they vex or trouble us; and St. *Paul* having written this Epiſtle to thoſe, who were then living under that monſtrous Emperour *Caius*, did clearly deſign, that the Chriſtian Religion was to be admired for commanding Subjects, not only to obey good Princes, but even ſubmitting peaceably to Tyrants. And ſuitable to this Doctrine are theſe Texts, *Heb. ch.* 12. *v.* 9. *We had Fathers of our fleſh, who corrected, and chaſtened us, after their own pleaſure, and we gave them reverence*; and leſt we might think that Text rather a Narration, than a Command, it is told us *Peter* 2. *v.* 18. *Servants be ſubject to your Maſters with all fear, not only to the good and gentle, but alſo to the froward, for this is thanks-worthy, if a man for conſcience toward God do endure grief.* And *v.* 20. *If when ye do well, and ſuffer for it, ye take it patiently this is acceptable to God, for even hereunto were ye called.*

Our bleſſed Saviour's practice, did likewiſe agree moſt admirably with his Precepts and Doctrine formerly inſiſted on, for though no man ever was, or can be ſo much injur'd as his bleſſed ſelf, nor could ever any de-

fenſive Arms have been ſo juſt, as in his quarrel, yet he would not ſuffer a Sword to be drawn in it, and to diſcourage all Chriſtians from uſing Arms, he told thoſe who were offering to defend even himſelf with Arms, *that whoſoever ſhould draw the Sword, ſhould periſh by it*; and it ſeems that God Almighty permitted *Peter*, to draw his Sword at that time meerly, that we might upon that occaſion be for ever deter'd from Defenſive Arms, by this our Saviour's Divine example and reaſoning.

The laſt Argument I ſhall produce, ſhall be from that moſt Chriſtian Topick us'd by St. *Paul*, Rom. 3. 8. *We ſhould not do ill that good may come of it.*

And therefore ſince diſobedience to Magiſtrates, but much more to Rebel againſt them, is forbid by the Laws both of God and Men: This diſobedience and oppoſition, cannot be juſtifi d by pretending that it is deſign'd for Reforming the Nation. And if it be anſwer'd, That this oppoſition, is not in it ſelf ill, becauſe the deſign juſtifies it. It is to this reply'd, That if this anſwer be ſufficient, then the former excellent Rule is of no uſe; for when a Servant ſteals his Maſters Mony to give to the Poor; or a Son cuts his Fathers Throat, becauſe he is vicious; or

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when *Jacques Clement* Stabbed *Henry* the 3. and *Ravillack Henry* the 4. of *France*, they might have alleadg'd the ſame in their own defence. Nor know we ſurer proof that any thing is impious, or unlawful, then when the Laws of our Nation have forbid it as a great Crime, they being againſt and contrary to no poſitive Law of God; but rather ſuitable to the ſame; and own'd as ſuch by Chriſtian Synods and Divines: there being no neceſſity to enforce this going out of the Road. All which holds in this caſe, nor can it be imagin'd how Reforming by Arms, can be thought neceſſary, ſince God both can without a Miracle, *Turn the hearts of Kings, in whoſe hands they are, as Rivers of Waters.* And can ſend devout Men to influence Kingdoms. And ſhould not we rather ſuffer Patiently as the Primitive Chriſtians did, that his Divine Majeſty may be by our Patience prevail'd upon, to Reform us now, as he did of old our Predeceſſors from Paganiſm; by our own Kings, in a Regular way, than upon every Notion of Bigot and Factious Ring-leaders overturn all Government, and Order, rent all Unity, and involve our Native Countrey in Blood and Confuſion. And whilſt we are fighting for the terms of Religion, loſe the

the true efficacy of Piety, and Devotion: for what uſe can there be of Patience, Humility, Faith and Hope; if we will preſently repair our ſelves, ſubmit to no Magiſtracy that differs from us, and believe that Religion cannot ſubſiſt except by us?

The Fathers alſo of the Primitive Church have inculcated ſo much this Doctrine every where, both by their Doctrine and Practice, and both theſe are ſo fully known, that I ſhall remit this point to thoſe Learn'd Men who have fully handled it. Only I muſt remember that excellent paſſage of St. *Ambroſe*, who being commanded to deliver up his Church to the *Arians*, ſays, *Volens nunquam deſeram, coactus repugnare non novi; dolere potero, flere potero, gemere potero; adverſus arma, milites Gothos, Lachrymæ meæ, mea arma ſunt, talia enim ſunt munimenta ſacerdotis; aliter nec debeo nec poſſum reſiſtere.* Which Prayers and Tears are likewiſe call'd the only Arms of the Church by the great *Nazianzen* in his firſt Oration againſt *Julian*, and by St. *Bernard* in his 221. Epiſtle. But more of this is to be found, *Tom.* 2. *Concil. Galliæ* pag. 533. Where it is fully prov'd, that all Subjects ought humbly and faithfully to obey the Regal Power,

Power, as being ordained by none but God with whom the wiſe Heathens agree; for *Marcellus Eprius* (*Tacit. lib.* 4. *hiſt.*) pray'd for good Princes, but obey'd bad ones; and *Terentius* in the ſame Author *An. lib.* 6. §. 3. confeſſes, *That the Gods had beſtow'd on the Emperor the ſole diſpoſal of all things, leaving nothing to Subjects, ſave the honour of obedience.* But becauſe theſe of that perſwaſion rather will believe *Calvin* than the Fathers, I have taken pains to conſider in him theſe few paſſages, *cap.* 20 *lib.* 4. *Inſtitut.* §. 27. *Aſſumptum in Regiam Majeſtatem violare nefas eſt, nunquam nobis ſeditioſæ iſtæ cogitationes in mentem veniant tractandum eſſe pro meritis Regem,* §. 29. *Perſonam ſuſtinent voluntate Domini, cui inviolabilem Majeſtatem ipſe impreſſit, & inſculpſit,* §. 31. *Privatis hominibus nullum aliud quam parendi, & patiendi datum eſt mandatum.* And all this Chapter doth ſo Learnedly and judicially impugn this Doctrine, that it is a wonder why *Calviniſts* ſhould differ from *Calvin.*

I know that to this it may be anſwered, That the ſame *Calvin* does qualifie his own words, which I have cited, with this following Caution, *Si qui ſunt* (ſaith he) *populares Magiſtratus, ad moderandam Regum libidinem*

dinem conſtituti (quales olim erant qui Lacedemoniis regibus oppoſiti erant Ephori; & qua etiam forte poteſtate (ut nunc res habent) funguntur in ſingulis regnis tres ordines; quum primarios conventus peragunt) adeo illos ferocienti Regum licentiæ, pro officio intercedere non veto; ut ſi Regibus impotenter graſſantibus, & humili plebeculæ inſultantibus conniveant, eorum diſſimulationem nefaria perfidia non carere affirmem; quia populi libertatem, cujus ſe tutores Dei ordinatione poſitos norunt, fraudulenter produnt.

To which my reply is, That theſe words muſt be ſo conſtructed, as that they may not be inconſiſtent with his former clear and Orthodox Doctrine, of not reſiſting Supream Powers, the former being his poſitive Doctrine, and this but a ſupervenient Caution, and they do very well conſiſt; for though *Calvin* be very clear, that Kings cannot be reſiſted, yet he thinks that this is only to be meant of thoſe Kings who have no Superiors to check them by Law, as the Kings of the *Lacedemonians* had, who by the fundamental Conſtitution of their Monarchy, might have been call'd to an accompt by the *Ephori*, and ſo in effect were only Titular Kings: Or of ſuch Monarchs as had only a co-ordinate Power with the States

States of their own Kingdom; and even in theſe Caſes, he does not poſitively aſſert, that theſe Monarchs may be reſiſted, but does only doubt whether *if there be any ſuch Superior or co-ordinate Magiſtrate repreſenting the People*, they may not reſtrain the Rage and Licentiouſneſs of their Kings: But that Caution does not at all concern the *Jus Regni apud Scotos*, becauſe this cannot be ſaid of the Kings of Great *Britain*, ſince the States of Parliament are only call'd by the King, and derive their Authority from him, and the Legiſlative Power is ſolely in the King, the States of Parliament being only Conſenters, he, not they, can only make Peace and War, and grant Remiſſions, and againſt him and not them Treaſon only is committed, and the Law Books of both Nations do affirm, that the King is Supream, and conſequently even according to *Calvin*'s Doctrine, neither his People, nor any of their Repreſentatives, can juſtly oppoſe, and much leſs puniſh him.

I know that *Grotius* is by the Republicans, and the Fanaticks, oft-times cited to defend this their Doctrine, of oppoſing Princes; but though his Teſtimony might be juſtly rejected, as being himſelf born under a Commonwealth, yet he is moſt impudently cited,

cited, for he *lib.* 1. *cap.* 4. does poſitively lay down as a general and undoubted Rule, That *Summum imperium tenentibus, reſiſti non poteſt, Thoſe who have the Supream Power cannot lawfully be reſiſted*; which Rule he founds upon the Principles of Reaſon, the Authority of Scripture, and the Practice of the Primitive Church; and though he limits the ſame thereafter by ſome exceptions, yet it will eaſily appear, that theſe exceptions extend not at all to our Caſe.

For the firſt relates only to ſuch Kings, as have receiv'd their Power with expreſs condition, that they may be tryed by other Magiſtrates.

The *ſecond* to ſuch as have voluntarily reſign'd their Empire, as *Charles* the 5*th.* did; and ſo the one may be oppos'd, becauſe they were only Titular Kings: and the other, becauſe they left off to be Kings, and conſequently we are concerned in neither of theſe Caſes.

The *third* limitation is only in the Caſe where he who was truly a King, has alienated his Kingdom to Strangers; In which Caſe, *Grotius* does contend, That Subjects may refuſe to obey, becauſe he ceaſeth to be their King. But as this is not our Caſe, ſo even in that Caſe *Grotius* is very clear, that

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if this alienation be made by an Hereditary Monarch, the alienation is null, as being done in prejudice of the lawful Succeſſor, but he does not at all aſſert that the Monarch may be thereupon depos'd by his People.

The *fourth* relates only to ſuch Kings, as from a hatred to their Countrey, deſign its Deſtruction and utter Ruine; but as he confeſſeth himſelf, *Id vix accidere poteſt in Rege mentis compote*; and conſequently can take only place in a mad Man, in which Caſe all Laws allow the Kingdom to be rul'd by Governours, and Adminiſtrators in the King's Name, if the madneſs be Natural, and a Total depravation of Sence. But if by Madneſs be meant a moral Madneſs, and deſign to ruin the Kingdom and the Subjects, as was, and is moſt impiouſly pretended againſt King CHARLES the firſt, and King CHARLES the 2*d*, the beſt and moſt reaſonable of Kings; then Oppoſition in ſuch Caſes is not at all warranted by *Grotius*, who ſpeaks only of a Phyſical and Natural Madneſs; for elſe every thing that diſpleaſeth the people ſhould be call'd Madneſs; and ſo the exception ſhould not limit but overturn the general rule, and ſhould Arm all Subjects to rebel againſt

againſt their Princes; and make them the Soveraign Judges in all Caſes. Which is inconſiſtent with *Grotius*'s own Doctrine, and is excellently refuted by his own Reaſons.

The *fifth* relates only to Kings, who by the fundamental Laws of the Kingdom are ty'd to ſuch and ſuch Conditions, ſo as that if they fail in them, they may be oppos'd.

The *ſixth* relates only to Kingdoms where the Power is equally divided betwixt the King and the Senate.

The *ſeventh* is in caſe the King was at firſt inveſted by the People, with expreſs reſervation to them to reſiſt in ſuch and ſuch Caſes, and ſo is almoſt the ſame with the *fifth*, and all theſe three differ little from the *firſt*. And with *Grotius*'s good leave, they err alſo in this, that they are not properly exceptions from his own rule, for the rule being only, that Supream Powers cannot be reſiſted, theſe Powers are not Supream, and they needed not be caution'd by an exception, ſince they did not fall under the rule. But neither of theſe Caſes extend to us, ſince our King is by the Acts of Parliament formerly cited, declared *to be Supream over all Perſons and in all Cauſes*, nor made our

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ceſſors any ſuch expreſs reſervations at the firſt erection of the Monarchy, and conſequently by *Grotius* own poſitive Doctrine cannot be reſiſted. And ſo far is *Grotius* an enemy to ſuch Fanatical Reſiſtance, upon the Pretence of Liberty and Religion, that *num.* 6. he calls the Authors of thoſe Opinions, Time-Servers only. And *Gronovius* a violent Republican and Fanatick, taxes him extreamly for it, in his Obſervations upon that fourth Chapter, whoſe Arguments produc'd againſt *Grotius* I ſhall anſwer amongſt the other Objections.

Gronovius's firſt Argument why it ſhould be lawful to reſiſt the Supream Magiſtrate in defence of Religion, is, becauſe if it be not Lawful for Subjects to Arm themſelves for Religion againſt their Prince, it ſhould not be lawful for their Prince by the ſame rule to defend himſelf againſt *Turks* and *Infidels*, who would endeavour to force him to comply with their Impieties. But to this it is anſwered, That Reſiſtance to Superiors is expreſly forbid by the Laws of God and Nature, as is ſaid, but this cannot be extended to Caſes where there is no Subjection nor Allegiance; and it may be as well argu'd, that becauſe one private man may beat another who offers to ſtrike him,

that therfore a Child may beat his Parent, or a Servant his Maſter, or that becauſe I may violently reſiſt a private man who offers to take away my Goods unjuſtly, that therefore I may oppoſe the Sentence of the Magiſtrate, becauſe I forſooth do not think the ſame juſt.

His ſecond ſhift is, That our Saviour commanded only abſolute ſubmiſſion without reſiſtance in the Infancy of the Church when he himſelf was miraculouſly to aſſiſt his own Servants, but this Submiſſion was to end with the Miracles, to which it related. As to which, my anſwer is,

1. That all Commands in Scripture may be ſo eluded, nor is there any Duty more frequently and fully inculcated than this is, and that too in the ſame Chapters amongſt other Duties, which are to laſt for ever, ſuch as Submiſſion to Parents, and Maſters, and this is founded upon plain reaſon and conveniency, and not upon Miracles.

2. This was receiv'd and acknowledged by the *Pagans*, as has been fully prov'd, though it cannot be pretended that they rely'd upon any ſuch miraculous aſſiſtance.

3. It cannot be deny'd but the Fathers of the Primitive Church did recommend and

and justifie themselves in their Apologies to the Heathen Emperours for bearing patiently, when they were able not only to have resisted but to have overthrown their Persecuters, as is clear by the Citations out of *Tertullian*, *Cyprian*, *Lactantius*, *Augustine*, and others, to be seen in *Grotius*, *De Jure Belli*, *lib.* 1. *cap.* 4. *num.* 7. And it had been great impudence as well as sin in them to have boasted of a recent matter of Fact, which was not true: nor could there be a greater injury done to the Primitive Christians, as *Grotius* observes, than to ascribe that to their Weakness, which they consider'd as an effect of Duty; and why should the Heathen Emperours have suffered those to multiply, who obey'd only because Disobedience was not safe, for they might have certainly concluded, that by the same Principle that they obeyed only because they were weak, they would disobey as soon as they were able.

4. If the first Christians in general had obeyed only because they were not able to resist, then any private Christian had resisted when he was able, or would have fled or conceal'd himself, whereas it is acknowledg'd in the other answers press'd by *Grotius* himself, that they sought for Martyrdom, and so these two answers are incon-

ſiſtent; and the *Theban Legion*, and others, did ſubmit themſelves voluntarily to Martyrdom with their Arms in their hands, and when they were able to have overthrown the Emperour.

And *laſtly*, If this Doctrine were allow'd, no Society could ſubſiſt, for when Diſſenters grew ſtrong, the lawful Magiſtrate behov'd to periſh; whereas Jeſus Chriſt did contrive the Chriſtian Religion; ſo as that all Governours ſhould reaſonably wiſh their Subjects to be Chriſtians; and ſo as no Chriſtian ſhould attempt to overthrow the order and eſtabliſhment of Civil Government, and that they ſhould not be drawn away from practiſe of Chriſtian Devotion by the carnal deſires of being Great and Strong in the World, nor have any hopes in the Arm of Fleſh to the leſſening of their immediate dependence upon him.

His third ſhift is, That his Doctrine of Submiſſion and of dying for the Chriſtian Religion without making Reſiſtance, was only the Practiſe, but not the Command of the Primitive Church, and proceeded from their immoderate affectation of the Crown of Martyrdom, as *Milton* alſo pretends. But ſince the expreſs Command of Scripture is founded upon ſuch clear Reaſon,

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and ſince (as *Grotius* well obſerves) the Practiſe of the Primitive Chriſtians, who liv'd ſo near the Age wherein theſe Scriptures were pen'd, is the beſt Interpreter of the Scripture, it is horrid Impiety to make thoſe bleſſed Martyrs paſs for vain Hypocrites, and diſtracted Self-murderers, and it becomes us with holy reverence to imitate thoſe whom the Chriſtian Church has ever admir'd.

The fourth ſhift is, that the Proteſtant Churches have been reform'd by ſuch Inſurrections as theſe, contrary to the Royal Authority. But this is fully anſwered by the learned *Henry More* in his *Divine Dialogues*, and by *Du Moulin* in his *Philanax Anglicus*; where likewiſe are to be found the many Teſtimonies of Proteſtant Churches, and Proteſtant Divines, condemning poſitively the taking up of Arms againſt the Soveraign Power, even for the defence of Religion; and the very *Presbyterian Confeſſion of Faith* at *Weſtminſter*, is ſo poſitive as to this point, that the *Presbyterians* themſelves can never anſwer it. The ſum of which anſwer is, That the King of *Spain* coming by Marriage in place of the Duke of *Burgundy*, the ſaid King of *Spain* could pretend to no more Power than they had,

nor could the Houſe of *Burgundy* pretend to any more Power by marrying the Heirs of the Counts of the ſeveral Provinces, than thoſe Counts had over their Provinces; and therefore ſince none of theſe were Soveraigns over their Provinces, the Provinces might have reſiſted the King of *Spain* when he oppreſs'd them; and conſequently that Reſiſtance cannot defend ſuch as reſiſt Supream Powers upon pretence of Religion, *Grotius de Antiq. Reipub. Batav. cap. 7.*

The oppoſition made by the Proteſtants in *France*, was not occaſion'd by Religion, but upon a Quarrel betwixt the Princes of the Blood and the Houſe of *Guiſe* in the Minority of *Francis* the *2d*, and is defended moſt excellently by King *James* himſelf, not to have been Rebellion, in his *Defence of the Right of Kings*, pag. 14.

The Oppoſition made by the Princes of *Germany* to the Emperour, was founded upon the inherent Right in the Princes, by the Golden Charter of the Empire. And *Luther* himſelf declar'd, that *Magiſtratui non erat reſiſtendum*, and has written a Book to that purpoſe; nor would he engage in the Confederacy for Defenſive Arms at *Smalcald*, until the Lawyers declared that

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that Reſiſtance was lawful by the Laws of the Empire, *Vide* Slydan *Hiſt. lib.* 8. *anno* 1531.

The War that aroſe in *Switzerland*, was not occaſion'd by Religion; for the Reformation was once eſtabliſh'd with the conſent of the Magiſtrate. And the Eruption that was made by other *Cantons* upon the Reform'd *Cantons* eleven years after that Eſtabliſhment, *Vide* Slydan, *anno* 1522. Nor was it *Calvin* who baniſh'd the Prince and Biſhop of *Geneva*, for he fled eight Months before upon the detecting of a Conſpiracy, by which that Biſhop was to deliver over the Liberties of that City to the Duke of *Savoy*, and for which his Secretary was hang'd, *Vide* Turretin. *Annal. Reformationis*, *anno* 1529 And albeit thoſe who Reform'd in *Scotland*, in the Reign of Queen *Mary*, pretended Authority from the King, yet they were certainly Rebels, and are condemn'd by *Rivet*, a famous Proteſtant Divine, who alſo inveighs bitterly againſt this Principle, *Caſtiga Not. in Epiſt. ad Balſac. cap.* 13. *num* 14 *ſub finem.*

From all which, I obſerve, Firſt, That all the Proteſtant Divines by making Apologies for ſuch of their Profeſſion as have riſen in Arms againſt Supream Powers, muſt

be thereby concluded to be aſham'd of the Principle.

Secondly immediately upon the quieting thoſe Rebellions, all the Proteſtant Churches have in their *Confeſſions of Faith*, declared their abhorrence of that Principle; which being the product of Conviction and Experience, joyn'd with Duty, muſt be the moſt judicious and ſincere Teſtimony of all others.

Thirdly, All thoſe Rebellions have been occaſion'd by a miſtake in Point of Law, and not in point of Religion; for the Divines, as I have related, have been abuſed by the Lawyers: and therefore, ſince in the Iſle of *Britain*, the Laws of both Kingdoms have declared the Riſing in Arms againſt the King to be Treaſon, although for the defence of Religion; it neceſſarily follows, that this muſt be unlawful in point of Conſcience in this Kingdom.

Fourthly, Though good things may be occaſion'd by a Rebellion, yet that does not juſtifie a Rebellion; for though *Jeroboam* was allow'd by God to riſe againſt *Rehoboam*, yet God Almighty himſelf calls his revolt Rebellion, 1 *Kings* 12 19. and 2 *Chron.* 10. 19. and it is obſervable, that after this Revolt, there was but one good King amongſt all

all the Rebellious Kings of *Iſrael*; whereas amongſt the Kings of *Judah*, who were lawful Kings, there was but one or two who were any ways impious; ſo far does God bleſs a lawful Succeſſion.

Some alſo uſe as a ſhift againſt this Orthodox Doctrine, that the reaſon why the Primitive Chriſtians did not oppoſe their Emperours in the defence of the Chriſtian Religion, was, becauſe they had not been ſecured at that time in the Exerciſe of their Religion by the Laws of the Empire; and therefore the practice of thoſe Chriſtians can be no Argument why we may not now riſe to defend the Orthodox Religion, ſince it is now eſtabliſhed by Law. But this Objection is fully anſwered by that great Antiquary *Samuel Petit. Diatriba de Jur. Principum edictis Eccleſiæ quæſito*, where he clearly proves, that they were actually ſecured by the Edicts of the Emperours in the days of the Emperor *Tiberius*, and downward, and yet they would not riſe in Arms though they were perſecuted under thoſe ſame Emperors, becauſe the Word of God and the Chriſtian Religion did command Obedience under Perſecution, and did forbid Reſiſtance and taking up of Arms.

The Arguments that can be produc'd to juſtifie

juſtifie this Principle of Defenſive Arms, are almoſt anſwered in the former Article, *viz.* That there is a mutual Obligation betwixt King and People, ſo that when He breaks the one, they are free from the other, and that all Government is Eſtabliſht for the advantage of the People, and thus theſe few Arguments peculiar to this Point, remain now only to be here reſolv'd.

1. That Self-defence is by the Law of Nature allow'd to all, and even to Brutes, why then ſhould men who may loſe more, who deſerve better, and can uſe ſelf-defence more innocently, be debar'd from it?

2, We ſee in Scripture, that the People deſerted and oppos'd their Kings for Religion.

3. This has been allow'd with us in the inſtance of King *James* the third, againſt whom his Subjects roſe in Rebellion, for miſgoverning and oppreſſing His People, and this oppoſition, was firſt juſtified by God, in the ſucceſs he gave to their Arms, and thereafter by a ſpecial and expreſs Act in the enſuing Parliament, which ſtands yet unrepeal'd.

To which I ſhortly anſwer, That as to the firſt of Self-defence in Brutes, we muſt

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ſtill remember, that God hvaing deſign'd Government to bridle the Extravagancies ofreſtleſs Mankind, he has appointed Magiſtrates to be his Vicegerents and Repreſentatives, and has entruſted them with his Power, and ſo oppoſition to them is unlawful, becauſe it is not lawful againſt him; and becauſe if it were allow'd, all would pretend to it, and ſo there ſhould be no Order, nor Government. And that this may be the better obſerv'd, God has endowed man with Principles fitted for theſe ends of Order and Society, amongſt which, one is, That the publick Safety of the whole is to be preferr'd to the Safety of any one man, or of any number of private men, who are not to be conſidered as the publick, becauſe that is the publick Intereſt, which is the Repreſentative of the Nation, and that this Principle may be the better obey'd, he has commanded men to ſuffer injuries, rather than occaſion Diſorders, and has promiſed to reward Patience and Submiſſion for his ſake, with eternal Life, a Nobler Prize, than we here can contend for.

This being then Premis'd, it is anſwered, that though Brutes may defend themſelves, becauſe Order and the common good

good of Societies are not there concern'd; yet there is no reaſon to extend this to Men, whoſe Self-defence againſt Authority occaſions more miſchief, than it can bring advantage: And if this Argument hold, it would prove, that every man who is unjuſtly Condemn'd, or at leaſt thinks ſo, may kill the King, or His Judge; Servants might bind their Maſters, and the People of any private Town might pull down their Judge from the Bench, when they thought he oppreſt them. And as theſe muſt ſubmit, becauſe they expect Reparation from a higher Tribunal: So God has promiſed Reparation to thoſe who ſuffer for his ſake; and the greatneſs and ſureneſs of this Reward, makes this no uncomfortable Doctrine, and this Submiſſion is as neceſſary, and rather more, for mens preſervation, than Reſiſtance; and is a kind of Self-defence, ſince oppoſition to Authority would bring a certain ruine, and confuſion, in which more, would periſh, than oppoſition by private Self-defence would preſerve. Upon which Chriſtian Principles alſo, *Ameſ.* a Proteſtant and *Calviniſt* Divine has reſolv'd, *In bonis temporalibus tenetur quiſque perſonam publicam ſibi ipſi præferre, bonum enim totius pluris faciendum eſt quam bonum alicujus partis Caſ. con-*

conſcient. l. 5. cap. 7. Theſ. 14. and *Lex Rex* confeſſes, *p.* 335. *That a private man ſhould rather ſuffer the King to kill him, than that he ſhould kill the King, becauſe he is not to prefer the Life of a private man, to the Life of a publick man.*

And whereas it may be pretended, That though this oppoſition ſhould not be truſted to any private man, yet Parliaments and the Collective Body ſhould, and may be truſted with it. But to this I have anſwered formerly, That all Convocations without Authority from the King, and all riſing againſt him are indefinitely declared unlawful, and juſtly; for whoever wants Authority, is but in a private capacity, none having a publick capacity, ſave the Magiſtrates. And if they be allow'd to riſe, becauſe their quarrel is juſt, it muſt be as juſt to allow a leſſer number, if they have the ſame Juſtice in their pretence, and we have frequently ſeen, that the ſame Perſons who magnified the multitude for their numbers, did ſhortly thereafter divide from them, pretending that they were the *Sanior pars*, or juſter Party.

The Examples produc'd by our Republicans of the revolt of *Libna*, 2 *Chron.* 1. 21. And of *Jeroboam*, becauſe he had forſaken the

the Lord God of his Fathers, and of the Ten Tribes from *Rehoboam*, because of *Rehoboam* his oppression, 1 *King.* 12. prove not at all the lawfulness of the Subjects defection from their Kings, because these defections are only Related, but not allow'd in Scripture, and are recorded rather as instances of God's vengeance upon the wickedness of these Princes, than as examples justified in these Revolters, and to be follow'd by such as read the Sacred History: In which, when Examples are propos'd by the Spirit of God for our imitation, they are still honour'd with the Divine approbation. And I hope my Readers will still remember, that I design not by this Treatise to encourage Princes to wickedness by Impunity, but only to discourage Subjects from daring to be the punishers.

The great esteem which the great Bishop *Usher* has justly, even among Republicans and Fanaticks, for Learning and Devotion, has prevail'd with me, to set down two Objections used by him, with his pious Answers hereto.

The first is, "Suppose (say they) the "King, or Civil Magistrate should command "us to Worship the Devil, would you wish "us here to lay down our Heads upon the Block,

" Block, and not to repel the violence of " ſuch a Miſcreant, to the utmoſt of our " Power: and if not, What would be come of " Gods Church, and his Religion? To which " the Holy Man anſwers, That even when " the Worſhip of the Devil was comanded " by the cruel Edicts of perſecuting Empe- " rours, the Chriſtians never took up Arms " againſt them, but uſed fervent Prayers, as " their only refuge: And St. *Peter* animates them to this patient ſuffering 1. *Pet.* 4. 12. 13. *Beloved, think it not ſtrange concerning the fiery Tryal, but rejoice, in as much as ye are partakers of Chriſts ſufferings. But let none of you ſuffer as a murtherer, or a Thief, or as an Evil-doer, or as a Buſie body in other mens matters.* By which laſt words, if I durſt add to ſo great an Author as Biſhop *Uſher*, the Apoſtle ſeems expreſly to me to have obviated the dreadful Doctrine of riſing in Arms upon the pretence of Religion, and the killing ſuch as differ from them; which if the Chriſtians did allow, they ought to paſs for Murtherers, and to forbid them to meddle in matters of Government upon this pretence; becauſe then they ought to ſuffer juſtly, as buſie bodies. And here Biſhop *Uſher* does moſt appoſitely cite St. *Auguſtine*, in *Pſal.* 149. *The World rag'd,*

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the Lion lifted himself up against the Lamb, but the Lamb was full stronger than the Lion: The Lion was overcome by shewing cruelty, the Lamb did overcome by suffering. And St. *Jerome*, *Epist.* 62. " By shedding of Blood, " and by suffering, rather then doing injuries, " was the Church of Christ at first founded; " it grew by Persecutions, and was Crowned " by Martyrdoms.

The second objection is, If mens hands be thus ty'd, no mans Estate can be secure; nay the whole frame of the Commonwealth would be in danger to be subverted, and utterly ruin'd. To which he answers, That the ground of this objection is exceeding faulty, and inconsistent with the Rules of Humanity, and Divinity; of Humanity, because this would impower private Persons to Judge, and so should confound all Order, and invite all men to oppose Authority, and make Subjects Accusers, Judges, and Executioners too; and that in their own Cause, against their own Soveraign, and against Divinity, because it is contrary to the Scriptures, and Fathers, who command Submission, Humility, and Patience, *Rex est, si nocentem punit, cede justitiæ, si innocentem, cede fortunæ*, Seneca *de Jura. lib. 2. cap.* 30. If the King punish thee, when thou art guilty, submit to Justice: If when thou

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art innocent, ſubmit to Fortune. And if a Heathen could be induced by his vertue to ſubmit to blind Fortune, how much more ought a Chriſtian to be prevail'd upon by Devotion to ſubmit to the All-ſeeing Providence of the moſt wiſe God, *who maketh all things to work joyntly for good to them that love him*? And as St. *Auguſtine* piouſly adviſeth, Princes are to be ſuffered by their People, that in the exerciſe of their patience, temporal things may be born, and Eternal hop'd for.

The inſtance of King *James* the Third being puniſhed by his Subjects, is ſo far from being an Argument able to juſtifie Subjects riſing in Arms againſt their King, that this part of our Hiſtory ſhould for ever convince all honeſt men of the dangers that attend Defenſive Arms: For this Prince was ſo far from being one of thoſe Tyrants, againſt whom Defenſive Arms are only confeſt to be juſt, That few Princes were more meek and careful of his Subjects. But becauſe he imploy'd ſuch as himſelf had rais'd, finding that the Nobility had too often been inſolent Servants to their Prince, and ſevere Task-maſters to the People; the Nobility thinking more upon this imaginary neglect,

than their own duty, did from combinations, proceed to Arms, and rejecting all conditions of peace, they were at laſt curs'd with a Victory, in which this gentle Prince was murthered, whilſt he ſought to ſave his Sacred life in a deſerted Mill. By which we may ſee, that theſe Defenſive Arms ſo much hallowed in our late Debates, are but the Militia of Pride, Vanity and Ambition; and that if they be allow'd, the beſt of Princes will ever fall by them.

And as to the *Act* 14. *Par.* 4. *Ja.* 4. Whereby it is pretended that the oppoſing, and even the killing *K. Ja.* the 3. in Battel is juſtified, and which Act was never Repeal'd: It is anſwered,

Firſt, That this Statute was made by the ſame Rebels who had oppoſed their lawful Prince, and ſo was rather a continuing of their Rebellion, than a juſtification of it.

Secondly, That abominable Statute proceeds on the pretence of K. *James* the 3d. calling in the *Engliſh*, and deſigning to enſlave the Kingdom to Foreigners, which was not prov'd as is ought to have been, though the pretext had been legal, as it was neither legal nor true in the leaſt circumſtance, and the

the Noblemen and Barons are Condemn'd, without being cited or heard; though the Act be not a Statute but a Verdict, ſo unjuſt are all Rebels, who are forc'd to maintain one Crime by another.

Thirdly, In the new Collection of our Statutes made by *Skeen*, and Authoriz'd in many ſubſequent Parliaments, that abominable and Treaſonable Act is not inſerted, which was the beſt way to reſcind it, becauſe it was thought a reproach to the Nation to have any formal Law made to reſcind the Statute, which would have preſerv'd its memory in anulling its Authority.

Fourthly, Many Statutes ſince that time are made, declaring the riſing in Arms againſt the King and his Authority, upon any pretence whatſoeve to be Treaſon; and expreſly reſcinding all Acts and Statutes to the contrary, as Rebellious and Treaſonable, and there needed no more Poſitive Statutes to reſcind that Rebellious and Treaſonable Combination rather than Law.

As to the 44. *Act 6. Par. Ja.* 2. From which its urged, that becauſe that Act declares it Treaſon to aſſault Caſtles, and Places where the Kings Perſon ſhall happen

to be, without the Conſent of the three Eſtates: And that it is therefore lawful to aſſault the ſame with the Conſent of the three Eſtates, and conſequently to riſe in Arms with the Conſent of the three Eſtates, is no Treaſon. It is anſwered, that it being but too ordinary in the Minority of our Kings to have great Factions amongſt the Nobility (which ſhews alſo the danger of placing the Supream Power in the *Proceres Regni*) one of the Factions ordinarily either having made the young King Priſoner, or uſing to aſſault the Caſtle where he was really preſerved: It was therefore moſt wiſely declared by this Statute, *That to lay hands upon the Kings Perſon violently, what Age the King be of, young or old, or to Aſſail Caſtles or Places where the Kings Perſon ſhall happen to be, without the Conſent of the three Eſtates, ſhall be puniſhed as Treaſon.* That is to ſay, that ſo great reſpect was to be had to his ſacred Perſon, that no violence was to be offered to the Place where he was, until the ſame was allowed by the three Eſtates. But in all the former Laws, as well as thoſe made in our Age, it is ſtill declared Treaſon to rebel againſt the Kings Perſon, or to refuſe to aſſiſt him without adding, *except the ſame be done by the*

the three Eſtates, which ſhews that there's nothing deſign'd in this Act in favour of their Authority, and that this King was Minor the time of this Act; and that he had great Troubles in his Youth, is very clear from the ſhort characters given of our Kings, by *Skeen*, in the end of our Acts of Parliament.

It will (I hope) eaſily appear by the ballance of theſe Arguments, that at leaſt the Municipal Laws of our Nation, which puniſh Defenſive Arms as Treaſon, ſhould be obey'd by our Countrey-men, ſince, as I have oft inculcated, the Laws of any Nation ſhould ſtill be obey'd, except where they are inconſiſtent with the Word of God; and the moſt that the moſt violent Republicans alive can ſay upon this Subject, is, that the caſe may be debated by probable Arguments, and that neither of the Poſitions want their inconveniencies, ſo that in this, as in all other Debates, the Law of each Nation is the beſt Judge to decide ſuch Controverſies, and therefore ſuch as maintain theſe Principles, after ſo many poſitive and reiterated Laws, are obliged for preſerving the Peace of humane

Society, and the Order which God has eſtabliſht, to remove from places where they cannot obey, for they will always find ſome place where the Government will pleaſe them, and better they be diſquieted, than the Government of the whole World ſhould be diſturb'd: But if they will ſtay, and oppoſe the Government, it muſt be excus'd, to execute thoſe who would deſtroy it.

Having thus glanc'd only at Anſwers to theſe Objections, becauſe I think the Objections rather plauſible than ſtrong, I ſhall ſum up this Debate with theſe Reflections.

Firſt, *Buchannan*, and our Republican Authors, debate all theſe Grounds, as if we were yet to form the Government, under which we were to live, wheras we live under, and are ſworn to a Monarchy, fixt by Law and Conſent, time out of mind, and the Levellers may as well urge that no Nobleman ſhould be digniſi'd, nor no Gentleman enriched above a man of good ſence; and Tenants may argue that it is not reaſonable, that they bearing God's Image

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as well as the Maſter, ſhould toil to feed their Luſts: Thus Reaſon may be diſtorted, and we call that Treaſon and Providence, which pleaſes us beſt.

Secondly, Moſt of their Citations and Authorities, are the Sentiments of thoſe Greeks and Romans who liv'd under Commonwealths, and ſo magnifi'd their Countrey in oppoſition to Uſurpers; whereas our King is the Father of our Countrey, and whatever they ſaid of their Countrey, we ſhould ſay of him, and therefore theſe Citations concern us no more than the Law of *England* binds *Scotchmen*; they praiſe their own Children and Servants, for their Faithfulneſs and Obedience to them, and yet they rail at us for being faithful to our great Maſter and chief Parent under God.

Thirdly, Moſt of the Authors cited and admir'd by them, are Heathens, particularly *Stoicks*, who equall'd themſelves not only to Kings, but to their own Gods, and againſt whoſe ſelfiſhneſs and pride, all Chriſtians have juſtly exclaim'd, and ſo they are not competent Judges, nor ſure Guides to Chriſtians, in the exerciſe of thoſe purely

Christian Vertues of Humility, Submission, Self-denial, Patience, Faith, and Reliance upon God.

Fourthly, They balance not all the conveniences and inconveniences of either Government, but magnifie the one, and conceal the other; and thus it is true that Kings may be Tyrants, but so may, and usually are the Leaders of the Rabble: *Cromwel* was such, and *Shaftsbury* had been such; he was such in his Nature, and had been such in his Government; and the Distractions of a Civil War, which ordinarily attend Competitions amongst Republicans, destroy more than the Lusts of any one Tyrant can do, which made *Lucan*, tho a *Republican*, and of the *Pompeyan* Party, conclude, after a sad review of the continued Civil Wars betwixt *Sylla* and *Marius*, *Cæsar* and *Pompey*, without considering what followed under the *Trium viri*.

Fælices Arabes, Medique Eoaque tellus,
Qui sub perpetuis tenuerunt Regna Tyrannis.

Fifthly, Those who debate against Magistracy, gratifie their own Vanity and Insolence;

lence; but ſuch devout men as *Ambroſe*, *Auguſtine*, *Uſher*, and others, debate againſt the dictates of Intereſt, as well as Paſſion; which two, nothing ſave Grace can overcome, and there can be no ſurer mark of Conviction than to decide againſt theſe.

Laſtly, Even *Buchannan* repented his horrid Doctrine, *Cambden*, 10. year of Queen *Elizabeths* Reign, in 1567.

But foraſmuch as *Buchannan* being tranſported with partial affection, and with *Murrays* bounty, wrote in ſuch ſort, that his ſaid Books have been condemned of falſhood by the Eſtates of the Realm of *Scotland*, to whoſe Credit more is to be attributed; and he himſelf ſighing and ſorrowing, ſundry times blam'd himſelf (as I have heard) before the King, to whom he was School-maſter, for that he had imploy'd ſo virulent a Pen againſt that well deſerving Queen, and upon his Death-bed wiſhed that he might live ſo long, till by recalling the truth, he might even with his Blood, wipe away thoſe Aſperſions, which he had by his bad Tongue falſly laid upon her, but that (as he ſaid) it would now be in vain, when he might ſeem to dote for Age, *&c.*

Idem,

Idem, Anno 1582.

And not content with all this (ſpeaking of their ſurprizing the King) they compell'd the King againſt his Will, to approve of this intercepting of his Letters to the Queen of *England*, and to decree an Aſſembly of the Eſtates, ſummoned by them to be juſt, yet could they not induce *Buchannan* to approve of this their Fact, either by writing, or perſwaſion by Meſſage, who now ſorrowfully lamented, that he had already undertaken the Cauſe of Factious people againſt their Princes, and ſoon after Died, *&c.*

THAT

THAT THE *LAWFUL SUCCESSOR* CANNOT BE DEBARR'D FROM Succeeding TO THE CROWN:

Maintain'd againſt DOLMAN, BUCHANNAN, And OTHERS.

BY

Sir GEORGE MACKENZIE,

His Majeſties Advocate in Scotland.

LONDON,

Printed for *Richard Chiſwel*, at the *Roſe* and *Crown* in *St. Pauls Church-yard*. 1684.

King James

In His Advice to

Prince Henry.

Page 173.

IF God give you not Succeſſion, Defraud never the Neareſt by Right, whatſoever Conceit ye have of the Perſon; for Kingdoms are ever at God's diſpoſition, and in that Caſe we are but Liferenters, it lying no more in the Kings, than in the Peoples hands, to diſpoſſeſs the Righteous Heir.

Page 209. Ibid.

FOR at the very moment of the Expiring of the King Reigning, the Nearest and Lawful Heir entereth in his place; and so to refuse him, or intrude another, is not to hold out the Successor from coming in, but to expel and put out their Righteous King: And I trust at this time whole FRANCE acknowledgeth the Rebellion of the Leaguers, who, upon pretence of Heresie, by Force of Arms, held so long out, to the great Desolation of their whole Countrey, their Native and Righteous King from possessing his own Crown and natural Kingdom.

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THE RIGHT OF THE Succeſſion DEFENDED.

THE Fourth Concluſion to be cleared, was, *That neither the People, nor Parliaments of this Kingdom, could exclude the Lineal Succeſſor, or could raiſe to the Throne any other of the ſame Royal Line.*

For clearing whereof, I ſhall, according to my former method, Firſt, clear what is our poſitive Law in this Caſe; Secondly, I ſhall ſhew

ſhew that this our Law is founded upon excellent Reaſon: And laſtly, I ſhall anſwer the Objections.

As to the firſt. It is by the ſecond Act of our laſt Parliament acknowledged, "That "the Kings of this Realm, deriving their "Royal Power from God Almighty alone, "do Lineally ſucceed thereto, according to "the known degrees of Proximity in Blood, "which cannot be interrupted, ſuſpended "or diverted by any Act or Statute what-"ſoever, and that none can attempt to alter "or divert the ſaid Succeſſion, without in-"volving the Subjects of this Kingdom in "Perjury and Rebellion, and without expo-"ſing them to all the fatal and dreadful "conſequences of a Civil War, *DO* "*THEREFORE* from a hearty and ſincere "ſence of their duty recognize, acknow-"ledge and declare that the right to the "Imperial Crown of this Realm, is by the "inherent right and the Nature of Monar-"chy, as well as by the fundamental and "unalterable Laws of this Realm, tranſ-"mitted and devolved by a lineal Succeſ-"ſion, according to the Proximity of Blood. "And that upon the death of the King or "Queen, who actually reigns, the Subjects "of

" of this Kingdom are bound by Law,
" duty and allegiance, to obey the next im-
" mediate and Lawful Heir either Male or
" Female, upon whom the right and admi-
" niſtration of the Government is imme-
" diatly devolved. And that no difference in
" Religion, nor no Law nor Act of Parlia-
" ment made, or to be made, can alter
" or divert the right of Succeſſion and
" lineal deſcent of the Crown to the near-
" eſt and Lawful Heirs, according to the
" degrees aforeſaid: nor can ſtop or hin-
" der them in the full, free and actual ad-
" miniſtration of the Government accord-
" ing to the Laws of the Kingdom. LIKE
" AS OUR SOVEREIGN LORD, with
" advice and conſent of the ſaid Eſtates of
" Parliament, do declare it is High-treaſon
" in any of the Subjects of this Kingdom,
" by writing, ſpeaking, or any other manner
" of way to endeavour the alteration, ſuſ-
" penſion or diverſion of the ſaid right of
" Succeſſion, or the debarring the next Law-
" ful Succeſſor from the immediate, actu-
" al, full and free adminiſtration of the Go-
" ment conform to the Laws of the King-
" dom. And that all ſuch attempts or de-
" ſigns ſhall infer againſt them the pain of
" Treaſon.

This being not only an Act of Parliament, declaring all such as shall endeavour to alter the Succession, to be punishable, as Traitors; but containing in it a Decision of this Point by the Parliament, as the Supream Judges of the Nation, and an acknowledgment by them, as the representatives of the people, and Nation. There can be no place for questioning a point, which they have plac'd beyond all controversie, especially seeing it past so unanimously that there was not only no vote given but even no argument proved against it. And the only doubt mov'd about it was, whether any Act of Parliament, or acknowledgment, was necessary, in a point which was in it self so uncontroverted. And which all who were not desperate Fanaticks, did conclude to be so in this Nation, even after they had heard all the arguments that were us'd, and the Pamphlets that were written against it, in our Neighbour-Kingdom.

But because so much noise has been made about this question, and that blind bigotry leads some, and humorous faction draws others out of the common road. I conceive it will be fit to remember my Reader of these following Reasons, which will I hope clear that; as this is our present positive Law, so it is

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eſtabliſhed upon the fundamental conſtitution of our Government, upon our old Laws, upon the Laws of God, of Nature, of Nations, and particularly of the Civil Law.

As to the fundamental conſtitution of our Government, I did formerly remark, that our Hiſtorians tell us, that the *Scots* did ſwear Allegiance to FERGUS, who was the firſt of our Kings, and to his Heirs. And that they would never obey any other, but his Royal Race. Which Oath does in Law, and Reaſon, bind them to obey the Lineal Succeſſor, according to the proximity of Blood. For an indefinite obligation to obey the Blood Royal, muſt be interpreted according to the proximity in Blood, except the ſwearers had reſerv'd to themſelves a power to chuſe any of the Royal Family, whom they pleas'd, which is ſo true, that in Law an obligation granted to any man, does in the conſtruction of Law accrue to his Heirs, though they be not expreſt. *Qui ſibi provident, & hæredibus providet.* And *Boethius* tells us that after King FERGUS'S death, the *Scots* finding their new Kingdom infeſted with Wars, under the powerful influence of *Picts*, and *Britains*, they refus'd notwithſtanding to prefer

the next of the Royal Race, who was of perfect age, and a Man of great Merit, to the Son of King FERGUS, though an infant; which certainly in reaſon they would have done, if they had not been ty'd to the lineal Succeſſor. But leaſt the Kingdom ſhould be prejudg'd during the minority, they enacted, that for the future, the next of the Blood Royal ſhould always in the minority of our Kings adminiſter as Kings, till the true Heir were of perfect age. But this does not prove, as *Buchannan* pretends, that the people had power to advance to the Throne, any of the Royal Race: whom they judg'd moſt fit, for common ſenſe may tell us, that was not to chuſe a King but a Vice-Roy, or a Regent. For, though to give him the more authority, and ſo to enable him the more to curb factions, and oppoſe enemies, he was called King, yet he he was but *Rex fidei Commiſſarius*, being oblig'd to reſtore it to the true Heir, choſen rather to ſerve than Reign, and ſo Governed only for a time, and conſequently was only his Vice-Roy.

But becauſe the Uncles, and next Heirs being once admitted to this *fidei Commiſſarie* title, were unwilling to reſtore the Crown to their Nephews, and ſometimes murder'd them:

them: and oft-times rais'd Factions againſt them. Therefore the People abhorring thoſe impieties, and weary of the diſtractions, and diviſions, which they occaſion'd, begg'd from King KENNETH the 3*d*, that theſe following Laws might be made.

1. That upon the Kings death, the next Heir of whatſoever Age ſhould ſucceed.

2. The Grand-child either by Son or Daughter, ſhould be preferr'd.

3. That till the King arriv'd at 14 years of age, ſome Wiſe-man ſhould be choſen to Govern, after which, the King ſhould enter to the free Adminiſtration, and according to this conſtitution, ſome fit Perſon has ſtill been choſen Regent in the Kings Minority, without reſpect to the Proximity of Blood, and our Kings have been oft-times Crown'd in the Cradle.

In conformity alſo to theſe Principles, all the acknowledgments made to our Kings, run ſtill in favour of the King, and his Heirs. As in the firſt *Act Parl.* 18 *JAMES VI.* and the *II, III, IV. Acts Parl.* 1. *CHARLES II.* And by our Oath of Allegiance, we are bound to bear faithful and true Allegiance to his *Majeſty*, his Heirs and Lawful Succeſſors; which word LAWFUL, is

inſert, to cut off the pretences of ſuch as ſhould not ſucceed by Law, and the inſolent arbitrarineſs of ſuch, as being but Subjects themſelves, think they may chuſe their King, *viz. Act* 1. *Parl.* 21. *JAMES* the VI.

That this right of Succeſſion, according to the Proximity of Blood, is founded on the Law of God, is clear by *Num. Chap.* 27. *v.* 9. and 10. *If a man hath no Son or Daughter, his Inheritance ſhall deſcend upon his Brother*, by *Num.* 36. Where God himſelf decides in favour of the Daughters of *Zelophehad*, telling us, it was a juſt thing, they ſhould have the inheritance of their Father. And ordains, that if there were no Daughters, the Eſtate ſhould go to the Brothers. St. *Paul* likewiſe concludes, *Rom.* 8. *If Sons, then Heirs*; looking upon that, as a neceſſary Conſequence; which if it do not neceſſarily hold, or can be any way diſappointed, all his divine reaſoning in that *Chapter* falls to nothing. And thus *Ahaziah*, 2 *Chron.* 22. *v.* 1. was made King (though the youngeſt) in his Fathers ſtead; becauſe, ſays the Text, *The* Arabians *had ſlain all the eldeſt*: which clearly ſhews, That by the Law of God, he could not have ſucceeded, if the eldeſt had been alive. We hear likewiſe

wiſe in Scripture, God oft telling, *By me Kings reign.* And when he gives a Kingdom to any, as to *Abraham*, *David*, &c. he gives it to them and their Poſterity.

That this Right of Succeſſion flows from the Law of Nature, is clear; becauſe, that is accounted to flow from the Law of Nature, which every man finds grafted in his own heart, and which is obey'd without any other Law, and for which men neither ſeek nor can give another diſtinct Reaſon; all which holds in this Caſe: for who doubts when he hears of an Hereditary Monarchy, but that the Next in Blood muſt ſucceed; and for which we need no poſitive Law, nor does any man enquire for a further Reaſon, being ſatisfied therein by the Principles of his own heart. And from this ground it is, that though a remoter Kinſman did poſſeſs as Heir, he could by no length of time preſcribe a valid Right; ſince no man, as Lawyers conclude, can preſcribe a Right againſt the Law of Nature; and that this Principle is founded thereupon, is confeſt, *l. cum ratio naturalis ff. de bonis damnat: cum ratio naturalis, quaſi lex quædam tacita, liberis parentum hæreditatem adjecerit, veluti ad debitam ſucceſſionem eos vocando: propter quod ſuorum hæredum nomen eis in-*

dultum est; adeo ut ne à parentibus quidem, ab ea ſucceſſione amoveri poſſint. Et §. emancipati Inſtitut. *de* hæred. *quæ ab* inteſt. *Præter naturalem æquitatem ſequutus, iis etiam bonorum poſſeſſionem contra* 12 *tabularum leges, & contra jus civile permittit.*

Which Text ſhews likewiſe, That this Right of Nature was ſtronger than the Laws of the Twelve Tables, though theſe were the moſt ancient and chief Statutes of *Rome:* which Principle is very clear likewiſe from the Parable, *Matth.* 21. where the Husband-men, who can be preſum'd to underſtand nothing but the Law of Nature, are brought in, ſaying, *This is the Heir, let us kill him, and ſeize on his inheritance.*

Nor does this hold only in the Succeſſion of Children, or the Direct Line, but in the collateral Succeſſion of Brothers, and others. *L. hac parte ff. unde cognati. Hac parte proconſul Naturali æquitate motus, omnibus cognatis permittit bonorum poſſeſſionem quos ſanguinis ratio Vocat ad hæreditatem.* Vid. *l.* 1. *ff. de grad. & l.* 1. §. *hoc autem ff. de bonor. poſſeſſ.*

And theſe who are now Brothers to the preſent King, have been Sons to the former; and therefore whatever has been ſaid for Sons,

Sons, is alſo verified in Brothers: As for inſtance, though his Royal Highneſs be onely Brother to King *CHARLES* II. yet He is Son to King *CHARLES* I. and therefore, as St. *Paul* ſays, *If a Son, then an Heir*; except he be ſecluded by the Exiſtence and Succeſſion of an elder Brother.

That this gradual Succeſſion is founded on the Law of Nations, is as clear by the Laws of the Twelve Tables, and the *Prætorian* Law of *Rome*. And if we conſider the Monarchy either old or new, we will find, That where ever the Monarchy was not Elective, the degrees of Succeſſion were there exactly obſerved. And *Bodinus de Republ. lib. 6. cap. 5.* aſſerts, that, *Ordo non tantum naturæ & divinæ ſed etiam omnium ubique gentium hoc poſtulat.* From all which, Pope *Innocent* in c. grand. *de ſupplend. neglig. prælati*, concludes, *In regnis hæreditariis caveri non poteſt ne filius aut frater ſuccedat.*

And ſince it is expreſly determined, That the Right of Blood can be taken away by no poſitive Law or Statute, *L. Jura Sanguinis ff. de Reg. jur. & L. 4. ff. de ſuis legitim.* And that the power of making a Teſtament, can be taken away by no Law,

L. ita

L. ita legatum ff. de conditionibus : I cannot ſee how the Right of Succeſſion can be taken away by a Statute; for that is the ſame with the Right of Blood, and is more ſtrongly founded upon the Law of Nature, than the power of making Teſtaments.

Since then this Right is founded upon the Law of God, of Nature, and of Nations, it does clearly follow, *That no Parliament can alter the ſame by their municipal Statutes,* as our Act of Parliament has juſtly obſerved.

For clearing whereof, it is fit to conſider, That in all Powers and Juriſdictions which are ſubordinate to one another, the Inferior ſhould obey, but not alter the Power to which it is ſubordinate; and what it does contrary thereto, is null and void. And thus, If the Judges of *England* ſhould publiſh Edicts contrary to Acts of Parliament; or if a Juſtice of Peace ſhould reverſe a Decree of the Judges of *Weſtminſter*, theſe their endeavors would be void and ineffectual. But ſo it is, that by the ſame Principle, but in an infinitely more tranſcendent way, all Kings and Parliaments are ſubordinate to the Laws of God, the Laws of Nature, and the Laws of Nations; and there-

therefore no Act of Parliament can be binding, to overturn what theſe have eſtabliſhed.

This, as to the Law of God, is clear, not only from the general Dictates of Religion, but, 28 *Hen.* 8. *cap.* 7. the Parliament uſes theſe words: *For no man can diſpenſe with God's Laws, which we alſo affirm and think.* And as to the Laws of Nature, they muſt be acknowledged to be immutable, from the principles of Reaſon: And the Law it ſelf confeſſes, that *Naturalia quædam jura quæ apud omnes gentes peræquè obſervantur, divina quadam providentia conſtituta ſemper firma, atque immutabilia permanent* §. *ſed naturalia Inſtitut. de Jur. Natural. &* §. *ſingulorum de rer. divis.*

And when the Law declares, That a Supreme Prince is free from the obligation of Laws, *Solutus legibus*, which is the higheſt power that a Parliament can pretend to, or arrive at; yet Lawyers ſtill acknowledge, That this does not exclude theſe Supreme Powers from being liable to the Laws of God, Nature, and Nations: *Accurſ. in l. Princeps ff. de Leg.* Clementina *paſturalis de re judicata* Bart. *in l. ut vim de juſtitia & jure* Voet. *de Statutis.* Sect. 5. Cap. 1. Nor can the Law of Nations be overturned by pri-

private Statutes, or any Supreme Power. And thus all Statutes to the prejudice of Ambaſſadors, who are ſecured by the Law of Nations, are confeſs'd by all to be Null, and the higheſt Power whatſoever cannot take off the neceſſity of denouncing a War, before a War can be lawful: And Lawyers obſerve very well, That thoſe who would oppoſe the common Dictates of Mankind, ſhould be look'd upon as Enemies to all Mankind.

My ſecond Argument ſhall be, *That the King and Parliament can have no more power in Parliament, than any abſolute Monarch has in his own Kingdom:* For, they are, when join'd, but in place of the Supreme Power, ſitting in judgment; and therefore they cannot in Law do what any other ſupreme and abſolute Monarch cannot do, for all the Power of Parliaments conſiſts only in their Conſent; but we muſt not think, that our Parliaments have an unlimited Power *de jure*, ſo, as that they may forfeit or kill without a cauſe, or paſs Sentence againſt the Subjects without citing or hearing them; or, that they can alienate any part of the Kingdom; or, ſubject the whole Kingdom to *France*, or any other Foreign Prince; all which deeds

deeds would be null in themſelves, and would not hinder the Party injur'd from a due redreſs. For if our Parliaments had ſuch Power, we ſhould be the greateſt Slaves, and live under the moſt arbitrary Government imaginable. But ſo it is, That no Monarch whoſoever can take from any man what is due to him, by the Law of God, Nature, and Nations: For being himſelf inferior to theſe, he cannot overturn their Statutes. Thus a Prince cannot even *ex plenitudine poteſtatis*, *legitimate* a Baſtard *in prejudice* of former Children, though they have only but a hope of Succeſſion, *l* 4. *& ſequen. de natal. reſtituend.* And for the ſame Reaſon it is declared in the ſame Law, that he cannot reſtore a freed man (*reſtituere libertum natalibus*) in prejudice of his Patron, who was to ſucceed, though that Succeſſion was but by a municipal Law. For clearing which Queſtion, it is fit to know that the Eminent Lawyers who treat *Jus Publicum*, as *Arniſæus* and others, do diſtinguiſh betwixt ſuch Kingdoms as were at firſt conferr'd by the People, and wherein the Kings ſucceed by contract, and in theſe, the Laws made by King and People can exclude, or bind the Succeſſor. And yet even here they confeſs, that this

this proceeds not, becauſe the Predeceſſor can bind the Succeſſor, but becauſe the People renew the Paction with the ſucceeding King. But where the Succeſſor is to ſucceed *ex Jure Regni*, in hereditary Monarchies, there they aſſert poſitively, that the Predeceſſor cannot prejudge the Succeſſor's Right of Succeſſion; which they prove by two Arguments.

Firſt, That the Predeceſſor has no more Power, nor Right, than the Succeſſor: for the ſame Right that the preſent King has to the Poſſeſſion, the next in Blood has to the Succeſſion; and all our Laws run in favour of the King, and his Heirs, and no man can try his Equal, or give him the Law, *Par in parem non habet dominium.*

The ſecond is, That it were unjuſt and unequitable, that the Predeceſſor ſhould rob his Succeſſor, *Nulla ergo* (ſays *Arniſæus Cap.* 7. *Num.* 5.) *clauſula Succeſſori jus auferri poteſt, modo ſuccedat ille ex jure regni.* And *Hottoman lib.* 2. *de Regno Galliæ* aſſerts, that in *France*, which is a very abſolute Monarchy, *Ea quæ jure Regio primogenito competunt, ne Teſtamento quidem patris adimi poſſunt.*

And thus when the King of *France* deſign'd to break the Salique Law of Succeſſion,

ſion, as in the Reign of *Charles* V. it was found impracticable by the Three Eſtates: And when *Pyrrhus* was to prefer his youngeſt Son to the Crown, the *Epirots* following the Law of Nations, and their own, refus'd him, *Pauſ. lib.* 1. In the year 1649, alſo *Amurat* the Grand Seignior having left the *Turkiſh* Empire to *Han* the *Tartarian*, paſſing by his Brother *Ibrahim*, the whole Officers of that State, did unanimouſly cancel that Teſtament, and reſtore *Ibrahim*, the true Heir, though a ſilly Fool: Which ſhews the Opinion not only of Lawyers, but of whole Nations and Parliaments: Thus *Vander Graaff*, an *Hollander*, confeſſes, *That it is not lawful to chuſe any of his Sons to ſucceed him, in which, the general quiet of the Kingdom is much concerned; and therefore, though the next Heir were wiſer, braver, and more generally beloved, yet the more immediate muſt be received, as choſen by God, whether good or bad, and as honoured with his Character.*

And if Kings could have inverted their Succeſſion, and choſen their own Succeſſor, Saint *Lewis* had preferr'd his own third Son to *Lewis* his eldeſt: And *Alfonſus* King of *Leon* in *Spain*, had preferr'd his Daughters to *Ferdinand* his eldeſt Son: And *Edward*

ward VI. of *England* had preferr'd, and did actually prefer the Lady *Jane Gray* to his Sisters *Mary*, and *Elizabeth*.

And if Successions, especially of such great importance, had not been fixed by immutable Laws of God and Nature, the various and unconstant inclinations of the present Governors, especially when shaken by the importunity of Stepmothers and Mothers, or clouded by the jealousie of Flatterers, or Favourites, had made the Nations whom they governed, very unhappy: and therefore, God did very justly and wisely settle this Succession, that both King and People might know, That it is by him that Kings Reign, and Kingdoms are secured in Peace against Faction: And it were strange, that this should not hold in Kings, since even amongst Subjects, the Honour and Nobility that is bestow'd upon a Man and his Heirs, does so necessarily descend upon those Heirs, that the Father, or Predecessor, cannot exclude the next Successor, or derogate from his Right, either by renouncing, resigning, following base or mean Trades, or any other: *For*, say those Lawyers, *since he derives this Right from his old Progenitors, and owes it not to his Father, his Fathers deed should not prejudge him therein*, *Fab.*

Fab. Cod. 9. Tit. 28. Def. 1. Warnee. Conſil. 20. Num. 7.

And as yet the Eſtates of Parliament in both Nations have no Legiſlative Power, otherwiſe than by aſſenting to what the King does; ſo that if the King cannot himſelf make a Succeſſor, neither can they by conſenting; and all that their conſent could imply, would only be, that they and their Succeſſors ſhould not oppoſe his Nomination, becauſe of their conſent. But that can never amount to a power of transferring the Monarchy from one branch to another, which would require, that the Transferrers, or Beſtowers, had the Supreme Power originally in themſelves: *Nemo enim plus juris in alium transferre poteſt quam ipſe in ſe habet.*

And if the States of Parliament had this power originally in themſelves to beſtow, why might they not reſerve it to themſelves, and ſo perpetuate the Government in their own hands? And this mov'd Judge *Jenkins*, in his Treatiſe concerning the Liberty and Freedom of the Subject, *pag.* 25. to ſay, that *no King can be named, or in any time made in this Kingdom, by the People. A Parliament never made a King, for there were Kings before there were Parliaments, and*

Parliaments are ſummoned by the King's Writs.

Fourthly, *A King cannot in Law alienate his Crown*, as is undeniable in the Opinion of all Lawyers; and if he do, that deed is void and null: nor could he in Law conſent to an Act of Parliament, declaring that he ſhould be the laſt King: And if ſuch Conſents and Acts had been ſufficient to bind Succeſſors, many ſilly Kings in ſeveral parts of *Europe* had long ſince been prevailed upon, to alter their Monarchy from *Hereditary* to *Elective*, or to turn it into a Commonwealth; and therefore by the ſame Reaſon, they cannot conſent to exclude the true Succeſſor: For if they may exclude one, they may exclude all.

Fifthly, In all Societies and Governments, but eſpecially where there is any aſſociation of Powers, as in our Parliaments, there are certain Fundamentals, which, like the noble parts in the Body, are abſolutely neceſſary for its preſervation; for, without theſe, there would be no Ballance or Certainty. And thus with us, If the King and each of the Eſtates of Parliament had not diſtinct and known limits, (ſet by the gra-

cious

cious Conceſſions of our Monarchs) each of them would be ready to invade one another's Priviledges. And thus, I conceive that if the Parliament ſhould conſent to, alienate half of the Kingdom, or to ſubject the whole to a Stranger, as in King *John*'s Caſe in *England*, and the *Baliols* in *Scotland*; it has been found by the reſpective Parliaments of both Kingdoms, that, that Statute would not oblige the Succeſſor. Or, if the Houſe of Commons in *England*, or the Boroughs of *Scotland*, ſhould conſent to any Act excluding their Eſtate and Repreſentatives from the Parliament, doubtleſs that Statute excluding them, would not prejudge their Succeſſors, becauſe that Act were contrary to one of the Fundamental Laws of the Nation. And the late Acts of Parliaments excluding Biſhops, were reprobated by the enſuing Parliaments, as ſuch; and therefore by the ſame Rule, any Statute made excluding the Legal Succeſſor, would be null and void, as contrary to one of the great Fundamental Rights of the Nation. And what can be call'd more a Fundamental Right, than the Succeſſion of our Monarchy? Since our Monarchy, in this Iſle, has ever been acknowledg'd to be Hereditary.

And that this Acknowledgment is the great *Baſis* whereupon moſt of all the Poſitions of our Law run, and are eſtabliſhed; ſuch as, *That the King never dies:* ſince the very moment in which the laſt King dies, the next Succeſſor in Blood is Legally King, and that without any expreſs Recognizance from the People; and all that oppoſe Him are Rebels, His Commiſſions are valid; He may call Parliaments, diſpoſe of the Lands belonging to the Crown; all men are liable to do him Homage, and hold their Rights of Him and His Heirs. And generally this Principle runs through all the veins of our Law; it is that, which gives life and authority to our Statutes, but receives none from them, which are the undeniable Marks and Characters of a Fundamental Right in all Nations: But that this Right of Lineal Succeſſion is one of the Fundamental, and Unalterable Laws of the Kingdom of *Scotland*, is clear, by the Commiſſion granted by the Parliament for the Union, in *Anno* 1604. in which theſe words are:

His Majeſty vouchſafing, to aſſure them of His ſincere diſpoſition and clear meaning, no way by the foreſaid Union to prejudge of hurt the fundamental Laws, ancient Privi-

ledges,

ledges, Offices and Liberties of this Kingdom; whereby not only the Princely Authority of His moſt Royal Deſcent hath been theſe many Ages maintain'd, but alſo His Peoples Securities of their Lands and Livings, Rights, Libertie, Offices and Dignities preſerv'd: Which if they ſhould be innovated, ſuch Confuſion would enſue, as it could no more be free Monarchy.

Sixthly, There would many great Inconveniencies ariſe, both to King and People, by the Parliaments having this Power: For weak Kings might, by their own ſimplicity, and gentle Kings, by the Rebellion of their Subjects, be induced to conſent to ſuch Acts, in which their Subjects would be tempted to cheat in the one Caſe, and rebel in the other. Many Kings, likewiſe, might be wrought upon, by the importunity of their Wives, or Concubines, or by the miſrepreſentations of Favourites, to diſinherit the true Succeſſor; and He, likewiſe, to prevent this Arbitrarineſs, would be oblig'd to enter in a Faction for His own Support, from His very Infancy.

This would likewiſe animate all of the Blood Royal to ſtrive for the Throne, and in order thereunto, they would be eaſily

induc'd to make Factions in the Parliament, and to hate one another; whereas the true Succeſſor would be ingag'd to hate them all, and to endeavour the Ruine of ſuch as he thought more Popular than himſelf; and every new Succeſſor would uſe new Miniſters, Officers, Methods, and Deſigns; whereas the apparent Heir uſes thoſe whom his Predeceſſor preferr'd.

Nor would the People be in better Caſe, ſince they ought to expect upon all theſe accounts, conſtant Civil Wars and Animoſities, and by being unſure whom to follow, might be in great hazard by following him who had no Right. And their Rights bearing to hold of the King and his Heirs, it would be dubious to the Vaſſals, who ſhould be their Superior, as well as who ſhould be their King. It is alſo in reaſon to be expected, that *Scotland* will ever own the Legal Deſcent: And thus we ſhould under different Kings of the ſame Race, be involved in new and conſtant Civil Wars; *France* ſhall have a conſtant door open'd by Alliances with *Scotland*, to diſquiet the Peace of the whole Iſle; and *England* ſhall loſe all the endeavours it uſed, to unite this Iſle within it ſelf.

Another great Abſurdity and Inconveni-

ency

ency which would follow upon the excluſion of the lineal Succeſſor would be, that if he had a Son, that Son ought certainly to ſucceed; and therefore after the next Lawful Heir were brought from abroad to Reign, he ought to return upon the Birth of this Son; and if he dyed he would be again call'd home, and would be ſent back by the Birth of another Son: which would occaſion ſuch affronts, uncertainties, diviſions, factions, temptations, that I am ſure, no good nor wiſe man could admit of ſuch a project.

I find alſo, that as the debarring the Right Heir, is in reaſon, the fruitful ſeed of all Civil War and miſery, (for who can imagine that the Right Heir will depart from his Right, or that wiſe men will endanger their lives and fortunes in oppoſition to it?) ſo experience has demonſtrated, how dangerous, and bloody this injuſtice has prov'd. Let us remember amongſt many Domeſtick examples, the miſeries that enſu'd upon the excluſion of *Mordredus* the Son of *Lothus*; the deſtruction of the *Picts* for having ſecluded *Alpinus* the Right Heir; the Wars during the Reign of *William* the Conqueror; thoſe betwixt King *Stephen* and *Henry* the II, betwixt the Houſes of *Lancaſter* and

York; betwixt the *Bruce* and the *Baliol*; the murther of *Arthur* Duke of *Britanny*, true Heir of the Crown of *England*, with many other foreign Hiſtories, which tell us of the dreadful miſchiefs ariſing from *Pelops* preferring his youngeſt Son to the Kingdom of *Micene*; from *Ædipus* commanding that *Polinices* his youngeſt Son ſhould reign alternately with the eldeſt; from *Pariſatis* the Queen of *Perſia*'s preferring her youngeſt Son *Cyrus*, to her eldeſt *Artaxerxes*; from *Ariſtodemus* admitting his two Sons, *Proclus* and *Euriſthenes* to an equal ſhare in the *Lacedæmonian* Throne. The like obſervations are to be made in the Succeſſion of *Ptolemæus Lagus*, and *Ptolemæus Phiſco*, In the Sons of *Severus*, in the Succeſſion of of *Sineſandus* who kill'd his Brother *Suintilla*, Righteous Heir of *Spain*, and that of *Francis* and *Fortia*, Duke of *Millan*, with thouſands of others: In all which, either the Uſurpers, or the Kingdom that obey'd them, periſh'd utterly.

To prevent which differences and miſchiefs, the *Hungarians* would not admit *Almus* the younger Brother, in excluſion of the elder *Colomanus*, though a ſilly deform'd Creature, albeit *Almus* was preferr'd by *Ladiſlaus* (the Kings eldeſt Brother) to both.

Nor

Nor would *France* acquieſce in St *Lewis*'s preferring CHARLES's third Son, to *Lewis* the Eldeſt. And the *Engliſh* refus'd to obey Lady *Jean Gray*, in prejudice of Queen *Mary*, though a Papiſt and perſecuter. *Tali & conſtanti veneratione nos Angli legitimos Reges proſequimur*, &c. ſays an *Engliſh* Hiſtorian.

Seventhly, If Parliaments had ſuch Powers as this, then our Monarchy would not be hereditary, but elective; the very eſſence of an hereditary Monarchy conſiſting in the right of Succeſſion, according to the contingency of blood. Whereas if the Parliament can prefer the next, ſave one, they may prefer the laſt of all the Liue, for the next ſave one, is no more next than the laſt is next. And the ſame reaſon by which they can chuſe a Succeſſor (which can only be that they have a Power above him) ſhould likewiſe in my opinion juſtifie their depoſing of Kings. And ſince the Succeſſor has as good right to ſucceed, as the preſent King has to Govern (for that Right of blood which makes him firſt, makes the other next, and all theſe Statutes which acknowledge the preſent Kings Prerogatives, acknowledge that they belong to him and his Heirs)

Heirs) it follows clearly, that if the Parliament can preclude the one, they may exclude the other. And we saw even in the last age, that such reasons as are now urged to incapacitate the Children of our last Monarch, from the hope of Succession, *viz.* Popery and arbitrary Government, did embolden men to Dethrone, and Murder the Father himself who was actual King.

Eighthly, That such Acts of Parliament, altering the Succession, are ineffectual, and null, is clear from this, that though such an Act of Parliament were made, it could not debar the true Successor: because by the Laws of all Nations, and particularly of these Kingdoms, the right of Succession purges all defects, and removes all impediments, which can prejudge him who is to Succeed. And as *Craig*, one of our learn'd Lawyers has very well expres's'd it, *tanta est Regii sanguinis prærogativa, & dignitas, ut vitium non admittat, nec se contaminare patiatur.* And thus though he who were to succeed, had committed Murther, or were declar'd a Traitor formerly to the Crown for open Rebellion against the King, and Kingdom; yet he needed not be restor'd by Act of Parliament upon his coming to the Crown: But his very

very Right of blood would purge all theſe imperfections. Of which there are reaſons given by Lawyers: one is, that no man can be a Rebel againſt himſelf, nor can the King have a Superior. And conſequently, there can be none whom he can offend. And it were abſurd that he who can reſtore all other men, ſhould need to be reſtored himſelf. The ſecond reaſon is, becauſe the puniſhment of crimes, ſuch as confiſcations, &c. are to be inflicted by the Kings Authority, or to fall to the Kings Theſaury; and it were moſt abſurd, that a man ſhould exact from himſelf a puniſhment. Like as, upon this account it is, that though in the Canon Law, Baſtards cannot be promoted to ſacred orders without diſpenſation, nor can *alibi nati*, that is to ſay, People born out of *England*, be admitted to ſucceed in *England*, by expreſs Act of Parliament there; Yet *Agapætus*, *Theodorus*, *Gelaſius*, and many others, have been admitted to be Popes without any formal diſpenſation, their election clearing that imperfection. And the Statute of *alibi nati*, has been oft found not to extend to the Royal Line.

That the Succeſſion to the Crown purges all defects, is clear, by many inſtances, both at home and abroad. The inſtances at home are

are, in *England Henry* the VI. Being disabled and attainted of High-Treason by Act of Parliament, it was found by the Judges, notwithstanding that from the moment he assum'd the Crown, he had Right to succeed without being restored. And the like was resolved by the Judges in the case of *Henry* the VII, as *Bacon* observes in his History of *Henry* the VII. Fol. 13. And in the case of Queen *Elizabeth*, who was declar'd Bastard by Act of Parliament, as is clear by *Cambden*, anno 2, *Elizabeth*. And though in *Scotland* there be no expres instances of this, because though some Rebellious Ring-leaders in *Scotland*, have often in a private capacity been very injurious to their King; Yet their Parliaments have been ever very tender of attainting the Blood-Royal, or presumptive Heirs. But *Alexander* Duke of *Albany*, and his Succession being declared Traitours, by his Brother King *James* the IV, his Son *John* was notwithstanding called home from *France* upon his Uncles death, and declar'd Tutor and Governour, without any remission, or being restor'd: That Employment being found to be due to him by the right of Blood: Therefore he had been much more declared the true Successor of the Crown if his Cousin King *James* the V. had died.

These

Theſe being ſufficient to eſtabliſh our deſign, I ſhall mention only ſome forraign ſtories.

CHARLES the VII. of *France*, who though baniſh'd by Sentence of the Parliament of *Paris*, did afterwards ſucceed to the Crown. And though *Lewis* the XII, was forfeited for taking up Arms againſt CHARLES the VIII, yet he ſucceeded to him without reſtitution. And *Lewis* the II. his Son being declared a Rebel, whom his Father deſiring to diſinherit, and to ſubſtitute in his place *Charles* Duke of *Normandie*, that Son had ſucceeded if he had not been hindred by the Nobility, who plainly told him it was impoſſible to exclude his Son from the Succeſſion.

My next task ſhall be to ſatisfie the arguments brought for maintaining this opinion, whereof the firſt is:

That God himſelf has authoriſed the inverting the Right of Succeſſion, by the examples of *Eſau*, *Salomon*, and others.

To which I anſwer, that theſe inſtances which are warranted by expreſs commands from God, are no more to be drawn into example, than the robbing of the *Ægyptians* Ear-rings. And it's needing an expreſs command,

mand, and the expreſſing of that command, does evince, that otherwiſe *Jacob*, nor *Solomon* could not have ſucceeded againſt the priviledge of Birth-right and Poſſeſſion. *David* was a Prophet, and a Man according to God's own Heart, and ſo it is preſumable, that he knew the Will of God, and God did wonderfully and remarkably declare *Solomon* to be preferable to all his Brethren.

The next Objection is, That it is naturally imply'd in all Monarchies, That the People ſhall obey whil'ſt the Prince governs juſtly, as in the paction betwixt *David*, and the People, 2 *Sam.* 5. which is moſt ſuitable to the Principles of Juſtice and Government, ſince Relations cannot ſtand by one ſide; ſo that when the King leaves off to be King, and becomes a Tyrant, the People may conſult their own ſecurity in laying him aſide, as Tutors may be removed when they are ſuſpected; and that this is moſt juſt, when Kings are Idolaters, ſince God is rather to be obey'd, than men.

To all which it is anſwered, That God, who loves Order, and knows the extravagant Levity and Inſolence of men, eſpecially when baited by hope of Prey, or Promotion,

tion, did wiſely think fit to ordain under the pain of Eternal Damnation, that all men ſhould be ſubject to Superior Powers for Conſcience ſake, 1 *Pet.* 2. 13. And that whoever reſiſts the Power, reſiſts God, *Rom.* 13. 2. reſerving the puniſhment of Kings to himſelf, as being only their Superior. And thus *David*, *Aſa*, and others, committed Crimes, but were not depos'd, nor debarr'd by the People.

Nor were even the idolatrous Kings, ſuch as *Achab*, *Manaſſe*, &c. judged by their Subjects.

Nor did the Prophets exhort the People to riſe againſt them, though they were oppoſing God's expreſs and immediate Will, and overturning the uncontroverted Fundamentals of Religion.

Nor did the Fathers of the Primitive Church excite the Chriſtians to oppoſe the Heathen and Idolatrous Princes under which they lived, and *Paul* commands them to pray for theſe Heathen Emperors.

Nor was the Emperor *Baſilicus* depos'd for abrogating the Council of *Chalcedon*, as is pretended by ſome *Republicans*, but was turn'd out by the juſt Succeſſor *Zeno*, whom he had formerly dethron'd.

Nor were *Zeno* or *Anaſtaſius* degraded for

for their errors in Religion, or their vices by the ancient Christians, but were oppreſt by private faction. And ſure they muſt think God unable to redreſs himſelf, who without warrant, and againſt his expreſs warrant, will uſurp ſo high a power. And we in this rebellious principle, own the greateſt extravagancy with which We can charge the Pope and Jeſuits, and diſown not only our own Confeſſion of faith, "which Article 1. *Chap.* 22. acknowledges, "That infidelity, or difference in Religion "doth not make void the Magiſtrates juſt or "legal authority, nor free the People from "their due obedience to him, but contradict the beſt Proteſtant Divines, as *Muſculus*, *Melanc̃thon*, and others; *vid. libell. de vitand. ſuperſtit.* Anno 1150. *& Conſil. Biden. Dec.* 1. *Conſil.* 10. *& Decad.* 10. *Conſil.* 5. nor can the ſubterfuge us'd by *Buchannan*, and others, ſatisfie, whereby they contend that the former Texts of Scripture prove only that the Office, but not the Perſons of Kings are Sacred: ſo that Parliaments or People may lay aſide the Perſons, though not the Office, ſeeing the Sacred Text ſecures oftner the Perſon, than the Office, as I have formerly more fully prov'd. And if this principle prevail'd as to the differences in the Theory of

of Religion, it would in the next ſtep be urg'd as to the practice of Religion; and we would change our Kings, becauſe we thought them not pious, as well as Proteſtant. And did not our Sectarians refine ſo far as to think dominion founded on grace? and this opinion ſeems to me more ſolid than the other, for certainly an impious Proteſtant, is a worſe Governour, and leſs Gods Vicegerent, and Image, than a devout Papiſt. And amongſt Proteſtants, every Sect will reject a King, becauſe he is not of their opinion. And thus our Covenanters, by the Act of the *Weſt-kirk*, *Anno* 1650. declar'd, they would diſown our preſent Monarch, if he did not own the Covenant. And though a King were a Proteſtant, yet ſtill this pretence that he deſign'd to introduce Popery, would raiſe his People againſt him, if differences in Religion could lawfully arm Subjects againſt their King, or did empower them to debar his Succeſſor. And when this cheat prevail'd againſt devout K. *Charles* I. the Martyr, of that Orthodox Faith to which he was ſaid to be Enemy, what a madneſs is it to allow this fatal Error, which was able to ruin us in the laſt Age, and went ſo near to deſtroy us in this? This is indeed, to allow that Arbitrarineſs againſt our Kings,

which we would not allow in them to us.

The ſecond Objection is, that in *England* the Parliament has frequently devolv'd the Crown and Government upon ſuch as were not otherwiſe to have ſucceeded, as in the inſtances of *Edward* the II. and *Richard* the II, the firſt of whom was moſt unjuſtly depos'd, for making uſe of *Gaveſtoun*, and the *Spencers*; which ſhews how extravagant the People are in their humours, rather than how juſt their Power is: For beſides that we do not read, that theſe Counſellors were unſufferable, there is no good Chriſtian that can ſay, that a King can be depos'd for uſing ill Counſellors. And as to *Richard* the II. his caſe is ſo fully examined, and all the Articles brought both againſt him, and *Edward* the II, ſo fully anſwered by the learn'd *Arniſæus* a Proteſtant Lawyer, (and who had no other intereſt in that debate than a love to Truth and Law) in that Treatiſe. *Quod nulla ex cauſa ſubditis fas ſit contra legitimum principem arma ſumere*, That we Proteſtants ſhould be aſham'd to bring again to the field ſuch inſtances, upon which *Arniſæus*, in anſwer to the Fourteenth Article againſt *Richard* the II, *viz.* that he refus'd to allow the Laws made in Parliament, does very well

well remark, that this was in effect to conſent to their being King, and to transfer upon them the Royal Power, and this will be the event of all ſuch undertakings.

The Inſtances of *Henry* IV. and *Henry* VII. are of no more weight than the other two, ſince theſe were likewiſe only Kings *de facto*, till King *Henry* VII. by his Marriage with the Lady *Elizabeth*, eldeſt daughter to King *Edward* IV. did by her tranſmit a juſt Title to his Succeſſor; and therefore it was not ſtrange, that either of theſe ſhould allow the Parliament to interpoſe, when they owed to them the poſſeſſion of the Throne. But yet *Henry* VII. himſelf (as the Lord *Bacon* relates in his Hiſtory) ſhun'd to have the Parliament declare his Title to be juſt, being content with theſe ambiguous words, *viz. That the inheritance of the Crown ſhould reſt, remain and abide in the King*, &c. And upon this account it was, that the ſame King caus'd a Law to be made, that ſuch as ſhould ſerve the King for the time, being in his Wars, could not be attainted or impeach'd in their Perſons or Eſtates.

As to *Henry* VIII. his procuring an Act, whereby the Parliament declares, That in

caſe he had no Iſſue by the Lady *Jean Seymour*, he might diſpoſe of the Crown to whatſoever perſon he ſhould in his own diſcretion think fit.

It is anſwered, That by a former Statute in the 25*th* year of his Reign, he, by Act of Parliament, ſettles the Crown upon the Heirs-male of his own Body, and for lack of ſuch Iſſue to Lady *Elizabeth*, and for lack of ſuch Iſſue alſo, to the next Heirs of the King, who ſhould for ever ſucceed according to the Right of Succeſſion of the Crown of *England*; which ſhews, that the Succeſſion to the Crown of *England* is eſtabliſh'd by the Law of Nature, and the Fundamental Laws of *England*, upon the Heirs of Blood, according to the Proximity of Degrees; ſo that though that King did afterwards prevail with the Parliament to declare this *Elizabeth* a Baſtard, as he did alſo his daughter *Mary* by another Act, and reſolve to ſettle the Crown upon *Henry Fitz-Roy*, Duke of *Richmond:* Yet theſe Acts teach us how dangerous it is to leave Parliaments to the impreſſion of Kings in the caſe of naming a Succeſſor, as it is to expoſe Kings to the Arbitrarineſs of Parliaments. But ſuch care had God of his own Laws, that

that *Mary* ſucceeded, notwithſtanding ſhe was Papiſt, and *Elizabeth* ſucceeded her, though ſhe was declar'd Baſtard; the Rights of Blood prevailing over the Formalities of Divorce, and the Diſpenſations of Popes, as the ſtrength of Nature does often prevail over Poiſons. And God remov'd the Duke of *Richmond* by death, to prevent the unjuſt Competition, and ſo little notice was taken of this, and the ſubſequent Act *Anno* 1535. that the Heirs of Blood ſucceeded without repealing of that Act, as an Act in it ſelf invalid from the beginning: for only ſuch Acts are paſt by, without being repeal'd.

And *Blackwood*, pag. 45. obſerves very well, that ſo conſcious were the Makers of theſe Acts, of the illegality thereof, and of their being contrary to the immutable Laws of God, Nature and Nations, that none durſt produce that King's Teſtament wherein he did nominate a Succeſſor, conformable to the power granted by thoſe Acts, that as ſoon as they were freed by his death from the violent Oppreſſions that had forced them to alter a Succeſſor three ſeveral times, and at laſt to ſwear implicitly to whomſoever he ſhould nominate, (a Preparative which this Age would not well bear, though

they cite it) they proclaimed firſt Queen *Mary* their Queen, though a Papiſt, and thereafter Queen *Elizabeth*, whom themſelves had formerly declared a Baſtard.

And as in all theſe Acts there is nothing declaring the Parliaments to have power to name a Succeſſor, but only giving a power to the King, for preventing miſchiefs, that might ariſe upon the dubiouſneſs of the Succeſſion, to nominate a Succeſſor, two of the legal Succeſſors having been declar'd Baſtards upon ſome Niceties, not of Nature, but of the Pope's Bulls for divorcing: So, this Inſtance can only prove, that the King may nominate a Succeſſor, and that the Parliament may conſent, not to quarrel at it, (which is all that they do) but does not at all prove, that where the Right of Nature is clear, the Parliament may invert the ſame. And Strangers who conſidered more the dictates of Law than of Paſſion, did in that Age conclude, That no Statute could be valid when made contrary to the fundamental Law of the Kingdom: *Arniſæus cap. 7. num.* 11. Henricus VIII. *Angliæ Rex* Eduardum *filium primo*, *deinde* Mariam, *denique* Elizabetham *ſuos hæredes fecerat, verum non aliter ea omnia valent quam ſi cum jure Regni conveniant.* Vid. *Curt. Tract. Feud. Par.* 4. *Num.* 129.

There

There ſeems greater difficulty to ariſe from 13 *Eliz.* c. 2. by which it is enacted, *that if any perſon ſhall affirm, that the Parliament of* England *has not full power to bind and govern the Crown in point of Succeſſion and deſcent, that ſuch a perſon, during the Queens life, ſhall be guilty of High-Treaſon.*

But to this Act it is anſwered, that this Act does not debar the next legal and natural Succeſſor; and theſe words, *That the Parliament has power to bind and Govern the Succeſſion*, muſt be, as all other general expreſſions in Statutes, interpreted and reſtricted by other uncontroverted Laws; and ſo the ſenſe muſt be, that the Parliament is judge where there are differences betwixt Competitors in nice and controvertable Points which cannot be otherwiſe decided: and both this and the former Acts made in *Henry* the VI. time, are not general Laws, but temporary Acts, and perſonal Priviledges, and ſo cannot overturn the known current of Law, *Quod vero contra rationem juris receptum eſt, non eſt producendum ad conſequentias.* And in all theſe inſtances it is remarkable, that the reſtriction was made upon the deſire of the *Soveraign*, and not of the Subject. And if we look upon this Act as made to ſecure them againſt *Mary* Queen

of *Scotland*, and to let her know, that it was to no purpose for her to design any thing against the Right or Person of Queen *Elizabeth*, as being declar'd a Bastard, by Act of Parliament in *England*; since her other Right as next undoubted Heir by Blood to the Crown, might be altered, or Govern'd: we must acknowledge it to be only one of these Statutes, which the Law sayes, are made *ad terrorem & ex terrore* only. Nor was there ever use made of it by Queen *Elizabeth*, nor her Parliaments; so fully were they convinc'd, that this pretended power was so unjust, as that it could not be justified by an Act of Parliament, being contrary to the Laws of God, of Nature, of Nations, and of the Fundamental Laws of both Kingdoms. But this Law being made to exclude Queen *Mary*, and the *Scottish* line, as is clear by that clause, wherein it is declared that every Person or Persons of what "degree or Nation soever they be, shall "during the Queens life declare or publish, "that they have Right to the Crown of "*England* during the Queens life, shall be "disinabled to enjoy the Crown in Succession, inheritance, or otherwayes, after the Queens death; It therefore follows, that it was never valid: For if it had, King *James* might

might have thereby been excluded by that perſon who ſhould have ſucceeded next to the *Scottiſh* Race. For it's undeniable, that Queen *Mary* did, during Q. *Elizabeths* Life, pretend Right to the Crown, upon the account that Queen *Elizabeth* was declared Baſtard. And therefore the calling in of King *James* after this *Act*, and the acknowledging his Title, does clearly evince, That the Parliament of *England* knew, that they had no power to make any ſuch Act: The words of which acknowledgment of King *James*'s Right, I have thought fit to ſet down as it is in the Statute it ſelf, 1 *Jac. Cap.* 1.

That the Crown of England *did deſcend upon King* James *by inherent Birthright, as being lineally, juſtly, and lawfully next and ſole Heir of the Blood Royal. And to this Recognition they do ſubmit themſelves and Poſterities for ever, until the laſt drop of their Blood be ſpilt. And further doth beſeech His Majeſty to accept of the ſame Recognition, as the firſt Fruits of their Loyalty and Faith to His Majeſty, and to His Royal Progeny and Poſterity for ever.*

It

It may be alſo objected, That by the 8 *Act. Parl.* 1. *Ja.* 6. it is provided in *Scotland*, that all Kings and Princes that ſhall happen to Reign and bear Rule over that Kingdom, ſhall, at the time of their Coronation, make their faithful promiſe by Oath, in preſence of the eternal God, that they ſhall maintain the true Religion of *Jeſus Chriſt*, the preaching of the Holy Word, and due and right Adminiſtration of the Sacraments now received and preach'd within this Kingdom; from which, two Concluſions may be inferr'd:

1. That by that Act the Succeſſor to the Crown may be reſtricted.

2. That the Succeſſor to the Crown muſt be a Proteſtant, that being the Religion which was profeſſed and eſtabliſhed the time of this Act.

To which it is anſwered, That this Act relates only to the Crowning of the King, and not to the Succeſſion. Nor is a Coronation abſolutely neceſſary: *Coronatio enim magis eſt ad oſtentationem, quam ad neceſſitatem. Nec ideo Rex eſt quia coronatur, ſed coronatur quia Rex eſt. Oldrad. conſil.* 90. num. 7. *Balbus lib. de coronat. pag.* 40.

Nor do we read that any Kings were Crown'd

Crown'd in Scripture except *Joas*: And *Clovis* King of *France* was the firſt who was Crown'd in *Europe*.

Nor are any Kings of *Spain* Crown'd till this day; *Siſenandus* was the firſt who in the fourth *Tolletan* Council gave ſuch an Oath amongſt the Chriſtians, as *Trajan* was the firſt amongſt the Heathen Emperours. And we having had no Coronation Oath till the Reign of King *Gregory*, which was in *Anno* 879. he having found the Kingdom free from all Reſtrictions, could not have limited his Succeſſor, or at leaſt could not have debarr'd him by an Oath: *Nullam enim poterat legem dictare poſteris, cum par in parem non habeat imperium*, as our *Blackwood* obſerves, *pag.* 13.

(2.) There is no Clauſe irritant in this *Act* debarring the Succeſſor, or declaring the Succeſſion Null, in caſe his Succeſſor gave not this Oath.

(3.) The Lawful Succeſſor, though he were of a different Religion from his People, (as God forbid he ſhould be) may eaſily ſwear, That he will maintain the Laws now ſtanding. And any Parliament may legally ſecure the Succeſſor from overturning their Religion or Laws, though they cannot debar him. And though the Succeſſor

ceſſor did not ſwear to maintain the Laws, yet are they in little danger by his Succeſſion; ſince all *Acts* of Parliament ſtand in force, till they be repeal'd by ſubſequent Parliaments, and the King cannot repeal an *Act* without the conſent of Parliament. But to put this beyond all debate, the 2d *Act* of this current Parliament is oppoſed, whereby it is declared, *That the Right and Adminiſtration of the Government is immediately devolv'd upon the next lawful Heir after the death of the King or Queen; and that no difference in Religion, nor no Law nor Act of Parliament can ſtop or hinder them in the free and actual Adminiſtration:* Which is an abrogation of the foreſaid *Act* concerning the Coronation as to this Point; for how can the adminiſtration be devolv'd immediately upon the Succeſſor, if he cannot adminiſter till he be Crown'd, and have ſworn this Oath?

And therefore King *James* urges very well, That ſure immediately upon the death of the laſt King, the Succeſſor acquires a Right; they who debar the Succeſſor, do not exclude a Succeſſor from entering, but debar a righteous King. And by *Act* 2. *Parl.* 1. *Seſſ.* 2. *Ch.* 2. It is declar'd Treaſon to ſuſpend the King from the Stile, Honour'

nour, or Kingly Name. *And* whereas *Dolman* urges, That at all Coronations the People are ask'd, *If they will have ſuch a King?* It is anſwered, That this is no neceſſary Solemnity, and is done rather to give the People occaſion to ſhew their affection, than their power; even as a Gentleman in *England* is appointed to offer Duel to any who would controvert the King's Right who is to be Crown'd, notwithſtanding of which offer, he who would controvert the Title, would certainly commit Treaſon. Nor can it be deni'd from our Hiſtory, but that many of our Kings have reign'd long before they were Crown'd, and that thoſe who rebell'd againſt them before their Coronation, were as legally Traytors as thoſe who rebell'd after it.

All Kings number the years of their Reign from their Predeceſſors death, and not from their Coronation. They grant new Commiſſions and Judicatures (who ſhould underſtand Law beſt of all others) decide in their Name, and by their *Authority*, before they be Crown'd: So that I cannot but ſmile at *Dolman*'s Conceit, who ſays, *That a King before his Coronation is betroth'd, but not a King eſpous'd to the Commonwealth till his Coronation, and conſequently may, till then, be rejected.* But

But this is a meer Whimſie and Scholaſtick Conceit, for ſure he acts as King; and ſince they who oppoſe him commit Treaſon, it is certain that he cannot be rejected, and the ſolid Right of Blood, and not airy Formalities, make Kings: Nor can I underſtand how Election and Birth can be join'd, to compleat the excellency of Hereditary Monarchy, as *Doleman* teaches; for make it our Elective upon the unfitneſs of the Succeſſor, and all Succeſſors ſhall be call'd unfit and unable to govern, when a Faction reſolves to ſet up a Rival, though he be really yet more unfit than the true Heir is.

The next Objection is, That ſince the King and Parliament may by *Act* of Parliament alter the Succeſſions of private Families, though tranſmitted by the Right of Blood, why may they not alter the Succeſſion in the Royal Family?

To which it is anſwered, that the reaſon of the difference lyes in this, that the Heirs of the Crown owe not their Succeſſion to Parliaments: for they ſucceed by the Laws of God, Nature, and the Fundamental Laws of the Nation; whereas private Families are ſubject to Parliaments, and inferiour to them,

them, and owe their private Rights to a municipal Law, and ſo may and ought in point of Right to be regulated by them. And yet I am very clear, that a Parliament cannot arbitrarily debar the eldeſt Son of a private Family, and devolve the Succeſſion upon the younger: and if they did ſo, their Acts would be null. But if this argument were good, we might as well conclude by it, that no perſon born out of *England*, or attainted of Treaſon could ſucceed to the Crown; becauſe he could not ſucceed to a private Eſtate. All which and many more inſtances do clearly demonſtrate that the Succeſſor to the Crown cannot be debarr'd, nor the Succeſſion to the Crown diverted by Act of Parliament.

The laſt objection is, that *Robert* the III. King of *Scotland*, was by an Act of Parliament preferr'd to *David* and *Walter*, who (as he pretends) were truly the eldeſt lawful Sons of *Robert* the 2*d.* becauſe *Euphan* Daughter to the Earl of *Roſs* was firſt lawful Wife to King *Robert* the 2*d*, and ſhe bore him *David* Earl of *Strathern*, and *Walter* Earl of *Athol*, *Alexander* Earl of *Buchan*, and *Euphan* who was married to *James* Earl of *Dowglaſs*, after whoſe deceaſe he married

ed *Elizabeth Muir*, Daughter to Sir *Adam Muir*; not ſo much (as *Buchannan* obſerves) from any deſign to marry a ſecond Wife, as from the great love he carried to *Elizabeth Muir*, whom becauſe of her extraordinary Beauty he had lov'd very paſſionately in his youth, and before he married the Earl of *Roſſes* Daughter, and from the love which he bore to the Sons whom *Elizabeth* had born before that firſt Marriage, who were *John* Earl of *Carrick* (who thereafter ſucceeded to the Crown by the Title of *Robert* the 3*d*,) and *Robert* Earl of *Fife* and *Monteith*, he prevail'd with the Parliament to prefer *John* eldeſt Son by *Elizabeth Muir*, to the two Sons which he had by the Earl of *Roſſes* Daughter, who was (as they pretend) his firſt lawful Wife.

In which though I might debate many nice points of Law relating to this Subject, yet I chuſe only to inſiſt on theſe few convincing anſwers.

1. That in a Caſe of ſo great moment Hiſtorians ſhould be little credited, except they could have produc'd very infallible Documents; and as in general one Hiſtorian may make all who ſucceed him err, ſo in this Caſe *Boetius* (who was the firſt) liv'd and wrote 200 years after the Marriage

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of King *Robert* the 2*d*, and wrote his Hiſtory at *Aberdeen*, very remote from the Regiſters and Records by which he ſhould have inſtructed himſelf; nor did he know the importance of this point, having touch'd it only tranſiently, though it has been deſign'dly preſs'd by *Buchannan*, to evince that the Parliaments of *Scotland* might prefer any of the Royal Line they pleas'd; and it is indeed probable that King *Robert* the 2*d*. did for ſome time make no great noiſe of his firſt Marriage with *Elizabeth Muir*, leaſt the meanneſs of the Match ſhould have weaken'd his Intereſt upon his firſt coming to the Crown, he being himſelf the firſt of the Race of the *Stuarts*, and having ſo ſtrong Competitors as the Earl of *Dowglaſs*, who claim'd Right to the Crown in the Right of the *Baliol* and the *Cummings*, as *Boetius* himſelf obſerves.

2. King *Robert* the 3*d*. having ſucceeded as the eldeſt lawful Son, and having been receiv'd as ſuch by that Parliament, and his Poſterity by all ſucceeding Parliaments, the Poſſeſſion of the King and the Acquieſence of the People is the moſt infallible proof that can be adduc'd for proving that *Robert*

was the eldeſt lawful Son, nor have moſt Kings in *Europe*, or the Heads of moſt private Families any other proof of their being the eldeſt and Lawful Sons, ſave that they ſucceeded and were acknowledg'd as ſuch.

3. To ballance the Authority of theſe Hiſtorians, I ſhall produce the Teſtimony of the Learned Sir *Lewis Stewart*, one of the moſt famous Lawyers we ever had, and who ought much more to be believ'd than *Buchannan*, not only becauſe he was more diſintereſted, but becauſe he found upon Acts of Parliament and old Charters which he himſelf had ſeen in the Regiſters, in which *Elizabeth Muir* is acknowledg'd to have been the firſt Wife. *Buchananus lib. 9. in vita* Roberti 2. *affirmat* Euphaniam *Comitis Roſſenſis filiam primam Regis* Roberti 2. *uxorem fuiſſe & ea mortua, Regem ſuperinduxiſſe* Elizabetham Moram *ex qua prius Liberos ternos mares ſuſcepiſſet, et eam uxorem duxiſſe, ejuſque liberos regno deſtinaſſe, ut poſtea eorum natu maximus ſucceſſit quod quam falſum ſit, apparet ex archivis in carcere* Edinburgenſi *reconditis, ubi exſtant ſeparata acta duorum Parliamentorum, ſubſcrip-*

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ta manibus Eccleſiaſticorum præſulum, nobilium, baronum, & aliorum ſtatuum Parliamenti, & eorum ſigillis roborata, quibus Elizabetha Mora *agnoſcitur prima uxor, &* Euphania Roſſe *ſecunda, & liberis ex* Elizabetha Mora *tanquam juſtis hæredibus Regni, ſucceſſive regnum decernitur, & poſt eos liberis* Euphaniæ Roſſe *nec non ibidem cartæ extant plurimæ, factæ per* Davidem *ſecundum, eorum patruum magnum ex diverſis terris,* Joanni *filio primogenito, nepotis ejus* Roberti, *dum* Euphania Roſſe *viveret nec non* Davidi *filio natu maximo* Euphaniæ Roſſe *quem ſolum filium indigitat* Roberti *nepotis, quod non feciſſet ſi* Elizabetha Mora *non prius fuiſſet nupta* Roberto *ejus nepoti, nam primogenitus nunquam attribuitur notho imo ego plures quam viginti cartas in archivis inveni, ubi etiam eas reliqui, ex quibus ſole clarius eluceſſit,* Elizabetham Moram *primam fuiſſe uxorem, &* Euphaniam Roſſe *ſecundam, nam extra controverſiam, liberi* Elizabethæ Moræ *ætate grandiores erant liberis* Euphaniæ Roſſe: which Paper I did get from the Lord *Pitmeden*, who has himſelf written ſome learned Obſervations upon this Point.

4. I have my ſelf ſeen an Act of Parliament (found out by the induſtry of Sir *George Mackenzie* of *Tarbet*, now Lord Regiſter) having the intire Seals of the Members of Parliament appended thereto, by which the Parliament do ſwear Allegiance to *Robert* the Second, the firſt King of the Race of the *Stuarts*; and after him, Roberto *Comiti de* Carrict, *filio ſuo natu maximo* (his eldeſt Son) in *Anno* 1371. which was the firſt year of his Reign; I have alſo found out a Copy of an Act of Parliament amongſt the Records of the late famous Lord Regiſter *Skeen*, which I think fit to inſert, word for word, at the end of this Treatiſe, in Latin, the ſubſtance whereof in Engliſh runs thus:

That a Parliament being call'd at Scoon *the* 4*th. of* April, Anno 1373. *and third year of the Reign of King* Robert *the Second, on purpoſe to ſecure the Succeſſion, and to prevent all diſorders that might afterwards ariſe in any part of the Kingdom about Titles to the Crown; It was Enacted by the ſaid King* Robert *the Second, with the Advice and Conſent of the whole Three Eſtates, That the Sons then born to the King by his firſt and*

and ſecond Wives, and their Heirs, ſhould in order ſucceed to the King in manner after ſpecified: That is to ſay, that his eldeſt Son by the firſt Marriage, John *Earl of* Carrick, *ſhould immediately ſucceed, as had been already declar'd in the preceding Parliament, and after him his Heirs; And in caſe he dy'd without Iſſue, that his Brother,* Robert *Earl of* Monteith, *the King's ſecond Son of that Marriage, ſhould ſucceed, and his Heirs: Which failing, that* Alexander, *Earl of* Badenoch, *the King's third Son of that Bed, and his Heirs, ſhould inherit the Crown; And in caſe that fail'd, that* David, *Earl of* Strathern, *the King's fourth Son by his ſecond Wife, and his Heirs, ſhould ſucceed; And that failing, that* Walter *the King's fifth Son by the ſaid ſecond Wife, and his Heirs, ſhould inherit the Crown. And if it ſhould happen that the ſaid five Sons and their Iſſue ſhould fail, that then the next in Blood of the Royal Line ſhould ſucceed. Which Act all the Three Eſtates did for themſelves and their Heirs for ever, ſolemnly ſwear to obſerve, as is more at large to be ſeen in the Original it ſelf.*

And if the pretended Defect be true, it was a very palpable, and a very undeniable one, and could not but have been unanſwerably known to the whole Nation. And how can we imagine, that the whole Parliament would have unanimouſly drawn upon themſelves ſo dreadful a Perjury, by excluding the lawful Heir, againſt their National Oath in the Reign of King *Kenneth* the third, whereby they ſwore to own always the immediate Heir, or that they would have entail'd upon themſelves a Civil War, by preferring even a queſtionable Heir, after the Miſeries which they had lately then felt, in the Competition betwixt the *Bruce* and the *Baliol*; amongſt which Seals, the Seal of *James* Earl of *Dowglas* is one, and how ridiculous is it to think, that he would ſit and declare a Baſtard preferable to the Brother of his own Lady, and to his own Lady who would have ſucceeded, if her Brothers had died without Succeſſion? Which Act of Parliament does alſo clearly prove, that *Buchanan* did not at all underſtand matters of Fact in this part of the Hiſtory; for he aſſerts, that after the death of *Euphan Roſs*, the King married *Elizabeth Muir*, and did by Act of Parliament obtain the Crown to be

be ſetled upon *Robert* the third, Son to the ſaid *Elizabeth Muir*, upon whom he alſo beſtow'd the Title of *Carrick*; all which is moſt falſe, for this Act of Parliament is dated in *Anno* 1371. and King *Robert* the ſecond ſucceeded to the Crown that year, nor did *Euphan Roſs* die till the third year after he ſucceeded to the Crown, and ſo not till the year 1374. and yet in *Anno* 1371. this Act is paſt, deſigning him Heir to the Crown, and Earl of *Carrick*, and conſequently he was ſo deſign'd before the death of *Euphan Roſs*.

5. I have ſeen a Charter granted by King *Robert* the 2*d*, when he was only Steward of *Scotland*, in *anno* 1365, and ſo long before he was King. In which Charter likewiſe, *John*, thereafter King, by the name of *Robert* the 3*d*, is a conjunct Diſponer with him, under the expreſs deſignation of the eldeſt Son and Heir. Robertus *Seneſcallus* Scotiæ, *Comes de* Strathern, *&* Joannes *Seneſcallus primogenitus & hæres ipſius Dominus Baroniæ de* Kyle, *&c.* which Charter confirms to the Abbacy of *Paſley* ſeveral Lands diſponed to them, by *Reginaldus More*, Father to Sir *William More*

of *Abercorn*. And I find that *David* Duke of *Rothſay*, was alwayes in the Charters granted by his Father King *Robert* the firſt, called *Primogenitus*, and he was no Baſtard, nor can this deſignation be given to a Baſtard, as is clear by *Covaruvias de Matrim. part.* 2. *cap.* 8. §. 2. *num* 4. But how can it be imagined that the Monks of *Paſley* would have taken a Right from a perſon as Heir to the Crown, who was not: for this would have infer'd Treaſon againſt them, beſide the annulling their Right, or who could underſtand better the lawfulneſs of a Marriage, than a body of Church-men, living in the time, and very near to the Reſidence of the married Perſons, and in whoſe Conventual-Church the ſaid King *Robert* and *Elizabeth Muir* lie buried together.

Item, I have ſeen in the Regiſters another Charter granted by King *Robert* the 2d. in the firſt year of his Reign, with the conſent of *John* Earl of *Carrick*, *primogenitus & hæres*, Allano *de* Lavidia *terrarum de* Whitſlet; And another granted by the ſaid King, 1. *June*, *anno primo regni*, confirming to *Paulo Metire* a Charter granted by the Earl of *Roſs*, Father to *Euphan*, wherein the ſaid

ſaid *John primogenitus & hæres*, is a Witneſs: And to ſhew that the ſaid *Euphan Roſs* was then living when he was ſo deſign'd Heir, there is a Charter to her by the King upon the very ſame day of the Lands of *Lochleaven.* As alſo, there is a Charter granted by King *Robert* the 2*d*, the firſt year of his Reign, to *Alexander* his Son, and another to *John Kennedy* of the Barony of *Dalrymole*, in both which the ſaid *John* Earl of *Carrick* is call'd *Primogenitus*, and is Witneſs with the Earl of *Dowglas*; ſo that he has been deſign'd eldeſt Son and Heir openly, uncontrovertedly, and in all Papers, and with the conſent of the ſecond Wife and her Relations.

6. In the Parliament 1372. the ſaid *John* Earl of *Carrick* is deſign'd to be Lieutenant of the Kingdom, and all the Eſtates of Parliament ſwear to own him in his Government, and which Statute is printed amongſt the Statutes of King *Robert* the ſecond, Father to the ſaid *John*, and which muſt be during the Marriage with *Euphan Roſs*, for ſhe liv'd three years after her Husband was King, and he ſucceeded to the Crown *Anno* 1371. And this alſo confutes *Buchanan*, who aſſerts, that he was created Earl of *Carrick* after

after the death of *Euphan Roſs*, and it is againſt all ſenſe and reaſon to think that he could have been acknowledg'd during her life, if he had not been the true apparent Heir of the Crown, and a lawful Son.

I have alſo ſeen in *Fordon*'s Hiſtory, *lib.* 14. *pag.* 73. a Charter granted by King *David* to the Biſhops, with the conſent of *Robert* his Nephew, and his Sons giving power to the Biſhops to diſpoſe in Teſtament upon their own Moveables, which before that time did by a corrupt cuſtom fall to the King, in which Charter, the Witneſſes are, *Robertus Seneſcallus Comes de Strathern, Nepos noſter Joannes Seneſcallus Comes de Carrict, filius ſuus primogenitus & hæres, Thomas Comes de Mar, Georgius de Dunbar, Comes de March, & Gulielmus Comes de Dowglaſs*; ſo that here is not only the atteſtation of the Father before he was King, naming *John* Earl of *Carrick*, thereafter King *Robert* the 2*d.* his eldeſt Son and Heir, but the atteſtation of the Grand-Uncle King *David*, who could be no ways byaſſed in the Affair; and here he is ranked before the three eldeſt Earls in the Nation, who were then the three firſt Subjects therein; and it is againſt all Senſe, to think that the whole Biſhops would have ſought the conſent of the ſaid *John* as Apparent

parent Heir of the Crown, if he had not been Apparent Heir. I find alſo, that *Fordon* calls him when he is crown'd King, *Primogenitus Roberti ſecundi*; nor was there the leaſt oppoſition made to his Coronation, nor to the Coronation of *Annabella Drummond* his Queen (a Daughter of the Houſe of *Stob-hall*, now *Pearth*,) though both the Sons of the ſecond Marriage were then alive. I find alſo, that *Boetius* himſelf acknowledges, that the Earl of *Marches* Son *George*, being purſu'd for having married clandeſtinely one of the Daughters of *Eliz. Muir*, his defence was, that he married her when ſhe was the Daughter of a private Subject, and before King *Robert* was King, whereas if ſhe had been only a Baſtard-Daughter, it could have been no Crime to have married her.

7. *Walter* (who they pretend ſhould have ſucceeded to the Crown,) having kill'd his Nephew King *James* the firſt, Son to King *Robert* the 3*d*; He was not only not own'd after the death of the ſaid King *James*, as certainly he had been if his Title had been good, and his Right ſo recent and demonſtrable, having ſo many great and powerful Relations, that his Father

ther was induc'd upon their account to marry his Mother; but yet the ſaid *Walter* was by all the Parliament unanimouſly condemn'd as a Traitor, for having conſpir'd the death of his lawful Prince. Nor does *Boetius* juſtifie *Walter's* Title in the leaſt, but on the contrary, magnifies the Parliament for their juſt Sentence. As did likewiſe *Æneas Silvius* the Popes learned Legat, who exhorted the Parliament to condemn him.

8. How is it imaginable, that King *Robert* who had ſo lately, and after a ſtrong Competition come to the Crown, would have adventur'd to make his Title yet more diſputable, by preferring a Baſtard to the true Heir, who had ſo many Friends by his Mother, and who being an Infant had never diſoblig'd him.

9. If we will conſider the opinion of the *Civilians*, whom we and almoſt all Nations follow in the Caſes of Succeſſion, we will find, that the ſaid King *Robert* the third was the eldeſt and lawful Son of King *Robert* the ſecond, *Filius legitimus, & non legitimatus*: For,

1. They

1. They conclude, that a Son is prov'd to be a lawful Son by the Aſſertion of the Father, *Alciat tract. præſumpt. Reg.* 1. *præſumpt.* 2. *numb.* 6. and certainly the Father is the beſt Judge in ſuch Caſes; but ſo it is we have the Father owning the ſaid *Robert* the 3*d.* to be his eldeſt Son and Heir, both in Charters and Acts of Parliaments, which are the moſt ſolemn of all Deeds.

2. *Quando pater inſtituit aliquem tanquam filium ſuum*, which holds in this Caſe, where the Father inſtitutes and leaves him Heir, and the Parliament ſwears Allegiance to him as the Heir, *Muſcard. de prob. vol.* 2. *concluſ.* 799. And in dubious Caſes, the Father's naming ſuch a man as a Son, preſumes him to be a lawful Son, *nominatio parentis inducit filiationem in dubio, l. ex facto* §. *ſi quis Rogatus ff. ad trebell.*

3. Even Fame, and the common opinion of the People, do in favours of theſe that are in Poſſeſſion, and in antient Caſes, prove *& filiationem, & legitimationem, Maſcard. concluſ.* 792. but much more, where the Fame and common Opinion is ſupported by

by other Arguments, *fulgos conſil.* 128. *Panorm. in cap. tranſmiſſ. qui filii ſunt legitimi.*

4. When Writs are produc'd, calling a man a Son, the Law concludes him to be a lawful Son. *Muſcard. vol.* 2. *concluſ.* 800. *num.* 15. all which can be eaſily ſubſum'd in our Caſe. In which *Robert* the 3*d.* is nam'd not only Son but Heir, and Allegiance ſworn to him, even in the life-time of the ſecond Wife and her Relations ſitting in Paliament, and all this acquieſc'd in for many hundreds of years, and the Competitors puniſh'd as Traitors by the unanimous conſent of all the Parliament.

I know that *Buchannan* does moſt bitterly inveigh againſt thoſe Laws made by King *Kenneth* the 3*d*, as Laws whereby the ancient Right of Succeſſion was innovated, and whereby the Government was ſetled upon Children who were neither able to conſult with the People, nor to defend them, and whereby thoſe had the Government of the Nation conferr'd upon them who were not capable to Govern themſelves.

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To which my Anſwer is, That in this, *Buchanan*'s Malice contradicts his Hiſtory; for his own Hiſtory tells us, That the *Scots* ſwore Allegiance to *Fergus* and his Poſterity; and conſequently *Fergus*'s Son ought by Law to have ſucceeded, and not his Brother; for his Brother was none of his Poſterity, and therefore thoſe Laws made by King *Kenneth*, did but renew the old Law, and the Innovation introduc'd in favours of the Uncles, was a ſubverſion of the fundamental Law to which they had ſworn.

2. That the old Law was not abrogated, but was in Being by vertue of the firſt Oath, appears very clear by *Buchanan* himſelf, who confeſſes, that upon the death of *Durſtus*, a wicked Prince, it was debated whether his Son ſhould not ſucceed, *juxta ſacramentum* Ferguſio *præſtitum veteremque eſſe morem ſervandum*, which acknowledgeth that the Succeſſion was even in thoſe days eſtabliſhed by Law, by Oath, and by Cuſtom; and after the death of *Fergus* the ſecond, his Son *Eugenius* (though a Minor) was Crown'd, and his Uncle *Græmus* allow'd to be his Guardian. And

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Buchanan alſo brings in Biſhop *Kennedy*, *lib.* 12. praiſing this Law as made by *Kenneth*, a moſt wiſe and glorious Prince, with advice of all his Eſtates of Parliament; and which rather confirms (as he ſays) the old Law, than introduces a new one: So far did *Buchanan*'s Rage againſt Queen *Mary* prevail with him, to praiſe and rail at the ſame individual Law; and it is obſervable, that it is very dangerous to recede once from fundamental Laws, for *Buchanan* makes not only the Succeſſion Elective, but he makes no difference betwixt lawful Children and Baſtards, and excludes not only Minors during the Uncle's life, but Women for ever.

3. In all Nations where the Monarchy is Hereditary, Minors ſucceed, and ſo this innovation of cauſing the next Male ſucceed for all his Life, was contrary to the Nature of the Monarchy, and to the Cuſtoms of all Nations, and God in Scripture gives us many inſtances of it. *Joas* ſucceeded when he was ſeven years of age; *Joſiah*, when he was eight; *Manaſſeh* in twelve; and *Azariah* in ſixteen: And yet in thoſe days, God is ſaid to have choſen the King; for it is ſaid

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in *Deuteronomy*, *Thou ſhalt ſet over thee the King whom I have choſen*; and conſequently the choice of Minors cannot be ill, ſince God Almighty us'd to make ſuch a choice. I know that *Eccleſ.* 10. 16. ſays, *Woe unto the Land when thy King is a child*; but the Criticks interpret this of a King that is childiſh, *Puer intellectu & moribus:* or becauſe Factions ariſe by the oppoſition to his Regents, and this inconveniency did more neceſſarily attend the allowing a Regent King during Life, for both the Subjects and the true Heir rais'd Factions in that Caſe, whereas the Subjects only are factious in the other; and yet even they are no more factious for that ſhort time, than they are always in Commonwealths.

4. The reaſon why the Minor King was to have one to ſupply his Non-age ceaſing with his Majority, it was unreaſonable that the Remedy ſhould have laſted beyond the Diſeaſe, and the worſt effect that could have been occaſion'd by the Infant King's Minority was, that the Kingdom ſhould have been during that time govern'd by joint advice of Parliament, Councils, and Officers of State, which in *Buchanan*'s opinion in other places of his Hiſtory and Book *De Jure Regni*, is ſo excellent a Mo-

del, that he decries Monarchy as much inferior to it.

5. It was moſt inconvenient to accuſtom any private Family to live in the Quality of a King.

6. It could not but occaſion many Murders, and much Faction; for the true Heir could not live peaceably under this Eclipſe and Excluſion, nor could the Uncle live without making a Party to ſecure his pleaſant Uſurpation.

7. As theſe Diviſions and Factions were the natural and neceſſary Effects that were to be expected from this irregular Succeſſion, ſo it is very obſervable, that from King *Fergus* to King *Kenneth* the third, we had Seventy nine Kings, amongſt whom, almoſt the half were the moſt impious, tyrannical, or lazy Kings that ever we had, according to *Buchanan*'s Character of them; ſo happy and wiſe a thing is this (ſo much magnified) Election of a Succeſſor by the People and their Repreſentatives, to ſupply the defects of the lawful Heir; whereas from K. *Kenneth* the third, to King *CHARLES* the Second *incluſive*, we have had Thirty one Kings, Twenty ſix of whom have ſucceeded by a due lineal Right, and have prov'd vertuous Princes, greater by their Merit

Merit than their Birth, as if God had deſign'd to let us ſee, that though moſt of them ſucceeded whil'ſt they were very young, yet that he can chuſe a fitter Succeſſor than Parliaments can do; whereas the other five Kings who came to the Crown againſt that Law of *Kenneth* the third, *viz. Conſtantine* the Bald, *Grimus*, *Mackbeth*, *Donal Bain*, and *Duncan* the ſecond, were all perſons who deſerved very ill to be preferred to the true Heir, and who, as they came to the Crown againſt Law, ſo govern'd without it. And it is very ſtrange, that the *Fanaticks*, who think that every throw of the Dice is influenc'd by a ſpecial Providence, will not allow that God does by a ſpecial Providence take care who ſhall be his Repreſentative, who ſhall be the Paſtor of his Flock, and nurſing Father of his Church; let us therefore truſt his Care more than our own, and hope to obtain more from him by Chriſtian Submiſſion, Humility and Obedience, than we can by Caballing, Rebelling, and Sacrilegious Murdering, or Excluding the TRUE SUCCESSOR.

POSTSCRIPT.

IN regard there is mention made of an Act of Parliament determining the Succession of Robert *the Second's Children, and referr'd to here, upon further Consideration the Author has thought fit to defer the printing of it till another time, the Substance of it being inserted in the said* Pages.

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